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UNIVERSITY OF PENNSYLVANIA

Marriage and Divorce Legislation in Sweden

BY

JOHAN THORSTEN SELLIN

A THESIS

PRESENTED TO THE FACULTY OF THE GRADUATE SCHOOL IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY IN SOCIOLOGY

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PART ONE

Marriage and Divorce Legislation in Sweden to 1915

CHAPTER ONE

THE ENTRANCE INTO MARRIAGE

Betrothal. Among peoples of Teutonic origin marriage was originally a family affair, arranged betweeen the guardian of the woman and her suitor. She herself had no legal power to choose her future husband but had to submit to the judgment of her relatives. The Christian Church, with its conception of marriage as a union based on mutual agreement, vigorously opposed this procedure and succeeded in imposing its ideals on the nations it conquered. In its desire to supervise the private life of its members, the Church gradually gained control of the entire marriage ceremony. At first satisfied to bless the union after the civil marriage had taken place, it soon demanded that the ceremony be performed before the church door and in the presence of the priest; it was, then, only a matter of time until the ceremony was shifted to the church proper. The importance of ecclesiastical control of the marriage became still greater when marriage was made a sacrament. Complete power over the ceremony and its prerequisites was placed in the ecclesiastical authorities, and the Canon Law, which regulated this controlling power, received a recognition as universal as the Church itself.

The Canon Law was not entirely uninfluenced by the secular concepts of the countries it came to dominate. The inevitable conflict between it and the Civil Law, in matters affecting both State and Church, left both legal systems changed. The civil law betrothal received a place in the Canon Law, even though it was considered inferior to the ecclesiastical betrothal, which took place immediately before the ceremony and provided no betrothal period. The Church came to regard the civil law betrothal with a great deal of interest because of the very reason that it provided an interval, which facilitated the investigation of the disabilities to marriage.[1]

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[1] *Lagberedningens förslag till revision av giftermålsbalken och vissa delar av ärvdabalken, I.*, p. 76.

Influenced by the teachings of the Church, the Civil Law came to demand the woman's consent to the marriage. The result was the appearance of the so called "free" marriage, the significant feature of which was the absence of the guardian. The custom soon arose of having a "chosen guardian" give the woman away and this guardian was selected by the woman. Since the ritual, which had in the course of time developed, practically demanded that this person be able to read, it is probable that the priest, who used to be present to bless the union, was asked to officiate in this new capacity. From this it was but a short step to his taking charge of the entire ceremony, which resulted in its transference to the interior of the church, a development, which seems to have taken place at least in Anglo-Saxon countries.[2]

In the Swedish laws of the early Middle Ages, there were still traces of a marriage by purchase, which must have been common long before. In principle, however, this custom had already disappeared by the time the legal concepts took definite form in the Provincial Laws.[3] These laws held as necessary elements of a legal marriage, betrothal and a wedding, followed by cohabitation. The betrothal ceremony was preceded by negotiations of a financial nature. The suitor must show that he was able to support his wife and sometimes he must guarantee this support in the betrothal contract.[4] The dowry was also decided upon. It consisted in money, land, or personal property given to the woman by her father; if the marriage was disrupted, it was to be returned to her, her husband controlling it during the marriage.

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[2]Howard, G. E., *A History of Matrimonial Institutions*, vol. I, p. 276 *et seq.*

[3]At the dawn of the historical era, Sweden was divided into a great many shires or provinces, "landskap", inhabited by closely related peoples, governed by laws of their own making. These popular laws served to guide the procedure of the assemblies, where justice was dispensed. Of the nine or more Provincial Laws, dating back to the 12th or the 13th century, the Västgöta and Östgöta Laws are the oldest. Increased facilities of communication and the unification of the provinces into one kingdom made it possible for King Magnus Eriksson, in the middle of the 14th century, to appoint a commission to codify the laws into a general law for the realm. The result was Magnus Eriksson's Country Law, later followed by his Borough Law. The latter governed the towns; the former, the countryside. The Borough Law remained in force until both Town and Country got a common code in 1734. The Country Law was, in 1442, supplanted by Christopher's Country Law.

[4]Williams, M. W., *Social Scandinavia in the Viking Age*, p. 92.

The morning gift was also decided upon at this time. It was to be given by the man to the woman on the morning after the wedding night and usually consisted of money or land, sometimes reaching a considerable value. The suitor was by law required to bind the bargain by gifts to the guardian or other relatives of the woman. These gifts were often symbolical in nature and represented the price of the transfer of the guardianship of the woman.[5]

As for the betrothal ceremony proper, it was to be performed in the presence of witnesses. The father or the guardian of the woman placed her hand in that of the groom and affianced her to him, and those present declared that they had been witnesses to the betrothal. This act had serious legal consequences. It gave the man the right to have his bethrothed delivered to him when he claimed her. If the guardian failed to live up to his agreement, the suitor had the right to appeal to the civil authorities for aid. The loss of the gifts given to the woman or her relatives and, sometimes, a small fine were, however, the only punishment for the suitor, if he changed his mind.

The wedding was the act which signified that the marriage was completed. According to the Provincial Laws, not only a formal ceremony but cohabitation subsequent to such ceremony gave rise to a union with full legal status, a concept which survived long after the law had been changed and was recognized even in the code of 1734, which was not displaced until the law of 1915 was passed.

The influence of the Church is reflected in the Provincial Laws. By the time of their codification, the "purchase money" had already lost its character as such and consisted largely of gifts to the woman herself instead of to her guardian or other relatives.[6] Many of these laws also prohibited a guardian from arranging a marriage for his daughter or ward, without her consent. In 1216, the Church, in an attempt to control the ever increasing number of clandestine marriages, extended to Sweden an order requiring that no

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[5]Their name, the *mundr,* is still found in the word för*mynd*are, guardian.

[6]The Country and Borough Laws show this influence even stronger, specifying no gifts to be made to either the guardian or other relatives of the woman.

marriage be celebrated by its servants until banns had been published. The unions of persons who failed to comply with this order were declared illicit; they were not invalid. The Provincial Laws seem to have taken this order into account, since many of them stipulate publication without making it obligatory. It was probably regarded as a necessary prerequisite to the religious ceremony, which was mentioned in all the laws with the exception of the older Västgöta Law. The practise of the Church undoubtedly became accepted until most people had banns published and a religious ceremony performed.

The Reformation

The Reformation, which received official sanction in 1527, had but a slight effect on marriage legislation. The problem of clandestine marriages had made Luther emphasize the importance of ecclesiastical betrothal as the only true betrothal; it should lead to an immediate marriage and should not be entered into without the consent of the parents of the candidates. He believed that all secret betrothals should be regarded as invalid, except possibly in cases when physical union had taken place. The reformers, on the other hand, did not claim that a religious ceremony was absolutely necessary for the consummation of a valid marriage. Of course, the true Christian should take care that his marriage was duly published and entered into at the church door and at the altar, but these were not legal rules, only recommendations and therefore unenforceable. It was, consequently, the betrothal, which came to be regarded as the true marriage by the Evangelical churches, a union, which only received its confirmation by a religious ceremony, a concept quite in harmony with the opinion expressed by Luther that, "This is a marriage; I am yours and you are mine."[7]

As far as the institution of marriage is concerned, the new faith received its first expression in Sweden in the Ordinance of Västerås, 1527. This Ordinance read in parts: "If a man cohabits with his betrothed, he shall not be fined, since there is between them a right marriage before God, neither shall he divorce her. Should he desert her, the law shall punish him."[8] The Church Constitution of 1572 con-

[7]Quoted by *Lagberedningens förslag etc., I*, p. 79.
[8]*Ibid.*, p. 80.

tained a similar stipulation. "Where betrothal has taken place in the presence of witnesses and with gifts, and physical union follows, this shall be regarded as right and proper before God, although legal (i. e. ecclesiastical) betrothal and a religious ceremony have not followed."[9] What a remarkable likeness between this post-Reformation attitude and that expressed in the old civil laws, which regarded betrothal and subsequent cohabitation as the only absolutely necessary elements of a valid marriage. The following extract from the Constitution may also be of interest because it reflects the attitude of the Reformers: "No secret contract of marriage shall be valid, in the case of a girl, who betroths herself without the consent of her parents or guardian, unless they are later willing to recognize the betrothal, an action which peradventure must follow, if cohabitation has taken place; for children are, according to the command of God, subject to their parents in this as in all matters. However, parents and guardians shall not, in this or other matters, act with force or compulsion, for rarely does a good marriage result, when one is forced to take some one for whom neither love nor desire exists."[10]

The Church Constitution also tried to carry out the recommendations of the Reformers by attempting to substitute for the old civil betrothal an ecclesiastical one. The latter was to take place at the church door or in the vestry just before the religious ceremony was celebrated and was to replace the old fashioned custom of repeating the betrothal vows at the church door, in the presence of the priest.[11] The Constitution was frankly contemptuous of "betrothals that farmers make"[12] and stressed the importance of the ecclesiastical betrothal, which should be entered into regardless of the former. This attempt to change the practise of centuries failed and, in 1611, the clergy capitulated. Agreeing that the civil betrothal was to be considered valid, they simply advised all to have their betrothals executed in church before the congregation.[13]

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[9] *Ibid.*

[10] *Ibid.*, pp. 80-81.

[11] See page 30.

[12] *Lagberedningens förslag etc., I*, p. 81.

[13] *Ibid*, p. 82.

The Ecclesiastical Law of 1686.

The influence of the Reformation left practically no trace in the Ecclesiastical Law of 1686. Almost the only evidence of it was an order to the ministers to warn all people of the dangers of entering "conditional or lengthy betrothals." The law contained no rule regarding ministerial assistance at the betrothal but admonished the people to inform the minister about it in good season that he might "warn them of disabilities, which might be obstacles in their way."[14] Luther's emphasis on parental consent is reflected in the stipulation that not only the woman but also the *man* should have the consent of "those concerned" before the betrothal be entered into. Refusal to give such consent could be tested and set aside by the court, if not justified.

As to the form of the betrothal, the law required that it be executed only in the presence of "two honest and responsible male witnesses, one for each side, in addition to the parents or the guardian."[15] It was considered performed when "both say yes, without force or fear, and shake hands..... even though there be no gifts given."[16] It had the nature of a contract of marriage, equally binding the man and the woman. The consummation of the marriage by a religious ceremony was, of course, expected, and the law warned the betrothed against a premature cohabitation. But....a legal and valid marriage could be entered into without this ceremony. Physical union, subsequent to the betrothal, was regarded as establishing a marriage, which *should* be completed by a religious ceremony, but the validity of which was in no way impaired because the candidates failed to ask the Church to bless the union. If, in such cases, the man re-

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[14] *Ibid.*

[15] *Ibid.* Although the law seems to have required witnesses for a valid betrothal, practise came to hold written and even secretly performed betrothals valid, judging from the following Royal Resolution of Oct. 22, 1723. "Betrothals, which take place after fair and mature thought and the consent of those concerned and not from fear or force, nor due to drunkenness, frivolity, or such things, should not be regarded as incomplete, because no witnesses were present. Personal admission and written declarations, which have been prompted as above mentioned, should be as valid testimony as legal witnesses." *Ibid.*, pp. 83-84.

[16] *Ibid.*, p. 84. *Cf* Williams, M. W., *op. cit.*, p. 94. "Betrothal.... was of the utmost importance, for no marriage was considered legal unless preceded by a formally witnessed agreement regarding the dower and the mundr, in addition to a plighting of troth."

fused to grant the woman's wish to have a ceremony performed, the diocesan chapter[17] could declare her his wife. Should he be dissatisfied with this action, he could appeal to the civil courts.

There was another type of union, which had as great legal force as the betrothal, namely, cohabitation after promise of marriage. "If a man tempt a girl to cohabit with him after promising to marry her, he shall, according to God's command[18], be duty bound to marry her and not desert her. If he deny the promise and cannot be persuaded, he shall be referred to the civil courts, there to free himself. If he admit his promise, yet desert her, she shall enjoy the same rights as a betrothed woman and he shall be punished as one, who without cause forsakes his betrothed. But, if he has not reached majority, being under the tutelage of parents or guardian, he shall not be forced to the marriage without his parents' consent."[19] The usual, though by no means the only interpretation of this paragraph, seems to have granted the woman the right to have the marriage completed by a religious ceremony. Refusal by the man to comply with her wish, caused her to be declared his wife; he might even be given a prison sentence.

The Civil Code of 1734

According to the Code of 1734, a betrothal could take place in two ways; either by oral agreement in the presence of witnesses, two on the woman's side and two on the man's; or, in writing, by contract, signed by the man and the woman, or by separately written promises duly exchanged.

In the very first chapter of the law, we find the stipulation that "if a man desire to establish a household, he shall ask the woman's guardian for her and not forcibly take her nor secretly entice her away."[20] In spite of this, the betrothal

[17]In conjunction with the Bishop, these chapters conduct the religious affairs of their respective dioceses. They are composed of the dean of the cathedral parish and the majority of the professorial lecturers at the state college of the cathedral town. (In Uppsala and Lund, the university professors of theology take the place of the "lectors", and in Gothenburg, two rectors of the city churches are members, in addition). Although Stockholm belongs to the Archdiocese, it has a chapter of its own, headed by the rector of "Storkyrkan", who bears the title of "pastor primarius". The Court and Garrison parishes have, besides, a chapter of their own.

[18]*Exodus*, 22:16; *Deuteronomy*, 22:28-9.

[19]*Lagberedningens förslag etc.*, *I*, p. 87.

[20]*Sveriges Rikes Lag. Giftermålsbalken*, chapter 1, paragraph 1.

seems to have been largely a matter of mutual agreement, properly witnessed. The Code appears to have been inspired to some extent by the old Provincial Laws. The number of witnesses, which the Ecclesiastical Code placed at two, was doubled in accordance with the old civil law stipulation.[21] Again, the suitor was urged to give the guardian due notice of the time of the wedding. Refusal of the latter to deliver the bride, gave the bridegroom a right to ask the civil authorities for assistance. All of which indicates that, in form if not in spirit, the Code revived the old Teutonic betrothal in which the woman played a passive role..

The Canon law concept of free mutual agreement was also recognized. Validity was given to betrothal by a written contract, signed by the candidates, or by written promises. Secrecy, however, was not favored. Mere promises of marriage or secret agreements were not considered binding unless they were followed by cohabitation, and even then a religious ceremony should complete the marriage. If publication of banns had been applied for, secret agreements were recognized and a betrothal was looked upon as existing although the time and the manner of its actual beginning were unknown.

The importance of the betrothal lay primarily in the fact that it formed an effective bar to another union and had to be dissolved in a specific manner. If both the man and the woman desired its dissolution, they could apply to the diocesan chapter, which promptly granted their wishes. But, if only one of them desired it, court action became necessary. Should the court, in its investigation of the causes for the petition, find that the petitioner was chiefly to blame, the dissolution of the betrothal would be decreed but the court might at the same time prohibit the petitioner to marry as long as the other lived, remained unmarried, or remained unreconciled.[22] This prohibition became of little or no value, since the legal rights of the injured betrothed were rarely exercised.

With the law of 1734 the religious ceremony came into

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[21]"Now a man wishes to bind a woman's troth; then shall her guardian be with her and four witnesses, two on the man's and two on the woman's side. A betrothal is then legal." Quoted by *Lagberedningens förslag etc., I,* p. 91.

[22]*Ibid.*, p. 95

its own. No marriage with full legal status was recognized unless it was blessed by the Church.[23] There were, however, unions still formed without that blessing, unions based on the old custom, which regarded betrothal as the only ceremony necessary for a legal marriage. The drafters of the Code faced the task of fixing the status of these unions, which were no longer considered proper. They found it necessary to create a kind of inferior marriage, an "incomplete marriage", a rather curious institution, which has no exact counterpart in modern laws.

An incomplete marriage arose, when physical union followed upon a betrothal or a promise of marriage. "If the agreement had the nature of a betrothal, a marriage existed as soon as physical union had taken place, even though the legal effects were materially strengthened, in case one of the betrothed asked the court to be declared the other's husband or wife, if the latter was unwilling to have a religious ceremony performed. Cohabitation after a promise of marriage gave rise to an incomplete marriage only if the union, on the woman's petition, was given legal status by court decree, or if the man 'churched'[24] the woman as his wife or betrothed."[25] There were, consequently, four distinct types of incomplete marriages. As far as the woman was concerned, the important effect of this kind of union was that she gained marital property rights in the man's estate.

Court practise differed greatly with regards to unions arising from cohabitation after promise of marriage. Gradually the custom arose of declaring the promise binding and giving the woman marital property rights in the man's property, instead of declaring her his wife. This arrangement was not satisfactory to the clergy, since it did not force a

[23]It is interesting to note that although the ceremony had now become the legal foundation for a marriage, thereby displacing the betrothal, the latter nevertheless formed a bar to another marriage.

[24]A ceremony, the origin of which goes back to the days of purification mentioned in Leviticus. The teachers of the Church held that a woman, who had given birth to a child, should remain at home for six weeks and then appear in church to give thanks to the Lord. This custom gained in force in the Christian Church and gave rise to the "churching." The Ecclesiastical Law of 1686 prescribed a six-week period, which was, by Royal proclamation of 1866, cut to four weeks "or earlier". Refusal by the woman to follow this rule led to her being requested by her pastor to comply with the demands of good Christian order and custom. In practise she was given free decision. *Nordisk Familjebok*, article on *Kyrkotagning*.

[25]Ekeberg, B., *Äktenskapslagstiftningen*, p. 11.

marriage. In 1755 a decree was issued, declaring in substance that, when the court had pronounced the promise binding and the couple could not be induced by their pastor to have a religious ceremony performed, they were to be reported to the diocesan chapter, which warned them not to oppose their pastor's wishes. If these warnings failed, the matter was to be referred to the court and if no cause could be shown why the marriage should not take place, the court was to order its performance on pain of imprisonment. If this did not succeed in convincing the couple, the diocesan chapter was to try again its powers of persuasion and after that the government was given an opportunity to solve the problem. Its action was not suggested by the decree.[26]

It was not in agreement with the spirit of the age to use compulsory means to establish families and in 1810, upon the request of the Riksdag, the above decree was revoked. Later an order was issued, according to which a couple, which refused to have the ceremony performed when the court had declared the promise binding, was to be summoned before the cathedral chapter and requested to marry. If they refused and both desired the dissolution of their betrothal, the chapter was to issue a letter of dissolution; in other cases the matter was referred to the King for decision. Neither the rights of the woman nor those of the children were to be affected by the dissolution.[27]

Like betrothal, all the incomplete marriages formed a bar to another marriage and had to be dissolved before the latter could take place. Although the original purpose of this singular institution was to force the completion of a marriage by a religious ceremony, which would sanctify the relationship, this purpose was displaced by the aim of securing economic protection for the injured person, usually the woman. "According to the letter of the law, these unions were real marriages, but in reality they filled..... functions quite different from those of forming the legal basis for marital life. Their real purpose was.....to provide opportunity for redress for the one, who had been deserted by her (or his) lover, although the relationship had become highly intimate."[28]

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[26] *Lagberedningens förslag etc., I,* p. 101.
[27] *Ibid.,* p. 102.
[28] *Ibid.,* pp. 110-111.

Impediments to Marriage. To guard the welfare of the group all peoples have found it necessary to regulate the entrance into marriage for the purpose of eliminating those, who might by their union harm the group. Among primitive peoples, relationship, either actual or fictitious, has always proved an important bar to marriage and the Canon Law, which contained the legal concepts of the Church Fathers and their successors, forbade the marriage of persons physically related to the seventh degree, as well as those spiritually related, such as godfather and godchild, baptizer and baptized, etc. Marriages between those in holy orders or under solemn vows, as well as marriages between Christians and unbelievers were held void by the Canon Law, which also considered adultery, adoption, and affinity impediments to marriage.

Age. The Ecclesiastical Law of 1686 prohibited the marriage of person below legal and mature age, but this age was not stipulated nor had any previous law settled it. It is to be presumed that the man's age of majority, fifteen, was meant. The Commission, which drafted the law of 1734, planned to raise this age. The various preliminary drafts contained suggestions of placing it at eighteen or twenty-one, the marriageable age and the age of majority being made to coincide each time. In 1721, a Royal proclamation placed the man's age of majority at twenty-one and this age was incorporated in the law of 1734, although an earlier marriage could be permitted by Royal dispensation.[29] In 1853, the Riksdag made an attempt to have the man's marriageable age raised to twenty-five. It failed on the argument that his marriageable age would then be much higher than his age of majority, an undesirable feature.[30] In 1892, the woman's marriageable age was raised from fifteen to seventeen.[31] Strange to say, the inconsistency, which the

[29]During the decades immediately following the passage of the law, several changes were made to permit the sons of the peasants to marry at an earlier age without dispensation, but in 1841 the law was restored to its original form in this respect.

[30]*Lagberedningens förslag etc., I,* p. 134.

[31]The female Laplanders were not included in this act and could therefore marry at fifteen. The failure to raise their age as well seems not to have been based on any belief that they reached maturity earlier, but simply on the fact that the conditions of life among these nomads made a lower age desirable. In 1745, the male Laplanders received permission to marry at seventeen. Today there are about seven thousand Laplanders in Sweden. *Ibid.*, pp. 139-140.

Riksdag of 1853 fought, of having the man's age of majority and his marriageable age differ, did not arouse any criticism, when the woman's marriageable age remained at seventeen, while her age of majority was placed higher.

Guardianship. The position of the guardian in early Scandinavian society has already been discussed. It was he who disposed of his daughter's or ward's hand to her suitor and although the woman was later given power of independent choice, the guardian remained her representative. It is true that the law of 1734 required the man, who wished "to establish a household," to ask "the woman's guardian for her," but it also stipulated that her consent was necessary. The place of the guardian came to be less important, particularly after 1858, when an unmarried woman became independent at twenty-five. Below that age, she must have her guardian's consent, however, a situation, which might easily be made difficult, due to the artificial "order of guardianship", which preserved within the male line of the family the right to give the woman in marriage. As a result the deciding power often came to rest in the hands of distant, sometimes unknown relatives.[82]

Physical and mental disabilities. The law of 1734 contained no express stipulation against the marriage of persons affected with certain diseases or defects. In its discussion of betrothal, however, it gave some intimation of its attitude toward such unions. As causes for the dissolution of betrothals, the law restated the paragraphs of the Ecclesiastical Law, which permitted such dissolution on account of "incurable and infectious diseases, from

[82]"A father shall give away his daughter in marriage, and her mother may give him advice in the matter. If her father is dead, her mother shall take counsel with her blood relations. If neither father nor mother is living, the guardian appointed by her father, either orally or in writing, or the one appointed by her mother in counsel with her relatives, shall give her away... If they are not found, the following shall give her away, in the order given: full brother; paternal half brother; maternal half brother; all of these shall take the advice of her grandfathers. If neither full nor half brother lives, then parental grandfather; maternal grandfather; paternal uncle; or, maternal uncle. If they are not found, then the one closest related to her on her father's or mother's side. Are they equally close to her in relationship, he who is related to her on her father's side, man and not woman, shall give her away, after having taken counsel with her trustee and her nearest relatives on her mother's side. If no male relatives are living, her trustee shall give her away." Paragraphs 2 and 3, chapter 1, *Giftermålsbalken, Sveriges Rikes Lag.*

which one of the betrothed suffered before the betrothal or later acquired, such as leprosy, epilepsy, 'senselessness', frenzy, pocks from loose living, and horrible and great defects and blemishes, which would keep a person from working at his trade or occupation."[33] The Ecclesiastical Law also stated that if, in spite of such disease or defect, the betrothed desired to remain together, permission should be given them to do so "except in the case of infectious diseases, when a sufficient time shall be set, during which attempts shall be made to cure the disease."[34] If no cure resulted, the betrothal was to be dissolved. Incurable infectious diseases, consequently, were an unconditional impediment to the marriage of the diseased person, according to the Ecclesiastical Law of 1686.

Although it enumerated the same defects and diseases as the Ecclesiastical Law, the Code of 1734 contained no explicit stipulation regarding the dissolution of a betrothal against the wish of the betrothed. The result was confusion until a Royal letter of 1757 interpreted the Ecclesiastical Law in response to an inquiry, which called attention to the fact that although epilepsy caused the dissolution of a betrothal, if either candidate admitted the existence of the disease, the law did not make clear if *marriage* between epileptics was possible, if they both desired it. The letter instructed the clergy "to inform the city or district physician of the matter before publication of banns takes place and to give him all the circumstances, which, according to the nature of the disease, are known or can be ascertained from the diseased person's parents, relatives, or acquaintances in town or parish, so that the physician in question, after having sent this information and his own opinion to the *collegium medicum*[35] for ratification, can issue a reliable certificate, to be presented to the clergy, that the epilepsy is not of 'the right kind', or *epilepsia idiopathica,* in which case alone the person can not be allowed to marry."[36] The letter seemed to be prompted by a true desire for a eugenic reform, which would prevent the propagation of those suffering from "the right kind of epilepsy." It pointed out that this kind "should not be confounded with the so called *epilepsia sympathica,* or convul-

[33] *Lagberedningens förslag etc., I,* p. 154.
[34] *Ibid.*
[35] The Royal Medical Board.
[36] Quoted in *Lagberedningens förslag etc., I,* p. 172.

sions and twitchings, which often look like epilepsy, though due to other causes. It can be distinguished by good physicians and cured and cannot, therefore, be transplanted to children or form an impediment to marriage."

Epilepsy was not the only sickness, which came to be regarded as an impediment. The Instructions to the Royal Medical Board, in 1797, stated that when the Board was consulted regarding the nature of "inherited" infectious diseases and their effect on marriage, such inquiries should be answered with the idea in mind of saving the nation from the curse of incurable diseases. In practice, however, idiopathic epilepsy alone constituted an impediment to marriage, aside from such psychic ailments, which generally affected a person's ability to make valid contracts.

From 1904 on, an increasing realizaton of the importance of public health caused several attempts to be made to prevent the marriage of persons suffering from venereal disease, in its infectious stage at least. During the session of the Riksdag in 1904, a motion was made to institute a compulsory medical examination for all candidates for marriage and, in addition, require affidavits from two trustworthy friends as to the general health of the candidates. No action resulted. Again in 1908, a motion proposed that an investigation be made with a view of ascertaining the advisability of requiring a general medical certificate of a physical examination made shortly before the certificate was presented and of prohibiting the marriage of persons afflicted with, or in certain stages of, a disease, particularly insanity and venereal diseases. The Legislative Committee at that time held that such legislation would infringe on personal liberty and would not be supported by public opinion. Another reason advanced was purely opportunistic. It was feared that the low marriage rate would drop still lower if such an examination were made compulsory. The suggestion was made that education in public hygiene would be much more likely to increase a feeling of responsibility and a voluntary desire for medical assistance, and that the only direct result of such a law would be that "the individuals, against whom the law was directed, would keep on infecting others, with the only difference that it would occur outside instead of within the marriage relation; the children thus brought into the world would be ex-

posed to greater suffering and neglect than if they were born of legitimate unions."[37]

Relationship

Certain blood ties have always constituted bars to marriage, although there has been a steady trend toward minimizing their importance. Most peoples have had prohibitions against unions between persons in lineal ascent or descent. In Christian society this prohibition reached its height when the Canon Law, during its greatest period, extended it to include members of collateral lines to and including the seventh degree. Not only physical relationship but also a spiritual one, arising from baptism, confirmation, etc., was held to be an impediment by the Canon Law. The severity of these rules was finally recognized and in 1215 the Lateran Council reduced the physical kinship restrictions to include the fourth degree, which made it impossible for two persons to marry, if their great grandparents were children of the same father or mother or both.

In Sweden, the above decision by the Lateran Council seems not to have been applied for some reason or other. In the Church Constitution of 1572 we still find marriages prohibited "within the fifth generation." Due to laxity of enforcement and a changing public opinion, a decree of 1680 declared that only marriages between cousins were to be prohibited. The King also reserved to himself the right to issue dispensation even for such union. It is this point of view which the Code of 1734 reflects. In 1845, a Royal proclamation declared marriages of cousins permissible without dispensation, leaving as the only bar, up to the present law, the relationship between aunt and nephew, uncle and niece. Lineal ascent or descent has always proved an impediment to marriage.

Since the Church held that physical union made of man and woman one flesh, not marriage alone but cohabitation also gave rise to a relationship, which created all the various impediments that a regular union created. These impediments extended just as far for one of the cohabitants as the impediments of blood relationship did for the other. Even an impediment in the second and third degree was recognized.[38]

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[37]Quoted by *Ibid.*, p. 159.

[38]A man could not, for instance, if his wife died, marry any woman relative of his wife's former husband or any woman related by marriage to the latter.

The Code of 1734 somewhat modified these Canon Law regulations by abolishing the third degree relationship just mentioned. A decree of 1872 simplified matters still further by recognizing as the sole impediment of affinity relationship by marriage in lineal ascent or descent, i. e. first degree relationships. The Code of 1734 contained a rather curious prohibition based on this spiritual relationship, the so called "confusio graduum", which forbade "the son, so long as his father lived, to marry a woman, whose daughter was or is his father's wife."

Undissolved Marriage. Although the Criminal Law, in its seventeenth chapter, provided punishment for bigamy, neither the Code of 1734 nor any other law expressly prohibited it.

Period of Mourning. According to the Code of 1734, a widower could not remarry for a period of six months after the death of his wife; for the widow the period lasted a whole year. The sentiment which prompted this stipulation was expressed in the Ecclesiastical Law, which ruled that "a widow should mourn her deceased husband one year; a widower, his wife at least half a year."[39] For the woman the waiting period served still another purpose, that of assuring paternity by forbidding a second marriage until a child by her former husband could be born.

Assignment of Inheritance. The Code of 1734 forbade a widow or widower to remarry until the heirs of the deceased spouse had been given their respective shares of his estate. A Royal decree of 1818 warned the ministers not to perform a ceremony until documentary evidence was produced, showing that the estate had been properly divided. The Code did present one way out of the difficulty. If the matter promised to be the subject of litigation, the court could permit the person involved to place security for the amount in question. This done, the marriage could be performed.

Adultery. Marriage between persons, who had had adulterous relationship with each other, was prohibited by the Code of 1734. The dissolution of a marriage, on account of adultery, freed only the innocent spouse; the guilty one could not remarry without the other's permis-

[39] *Lagberedningens förslag etc., I,* p. 208.

sion in addition to that of the King. The death or the remarriage of the innocent spouse freed him, of course, but even then he could not marry the person with whom the adultery had been committed. In this fashion the law attempted to safeguard the life of the innocent spouse.[40]

Imprisonment. The Swedish law has known no unconditional prohibition against the marriage of persons serving prison sentences or awaiting execution. As a rule, however, such marriages have not been permitted.

Publication of Banns. When the Church began to exercise full control over the marriage institution, it was necessary to take steps that would successfully exclude prohibited marriages. It was, therefore, necessary for the ministers of the Church to investigate each individual's qualifications for marriage. As an aid to this investigation it became customary to publish a notice of the intended marriage with a request that information regarding possible impediments be lodged with the minister. This practise was given legal sanction in Sweden by a Papal letter of April 5, 1216, which made publication a necessary prerequisite to a religious ceremony. In addition, the letter contained definite instructions to the clergy regarding the scope of the investigation and the method of procedure.

The preliminaries to the publication, as developed up to the law of 1915, were as follows. If a couple desired to have their marriage consummated by a ceremony, they must first secure the publication of banns by personal application to the rector of the parish where the woman was registered. He, then, searched the parish records for possible impediments, aided in some cases by documentary evidence brought by the betrothed, such as affidavits regarding the condition of the estate, if the applicant had been previously married. Failure to find any impediments in the parish records, made it incumbent upon the minister to issue banns, which were published the following three Sundays from the pulpit of the parish church, immediately after the sermon. If any one knew of an impediment to the marriage, information was to be given to the minister, in the presence of two witnesses. The informant was also to place security for all damages and costs, which he might incur as a result of court action,

[40] *Ibid.*, pp. 221-222.

which was assured, since the informant had to swear out a complaint against the offender. If the court failed to see the justice of the protest, the informant was fined and had to pay the costs, which, of course, discouraged all protests born of malice or spite. Usually the information was lodged because the coming marriage infringed upon some one's private rights, such as the right of a woman to be declared the wife of the man, in case he had cohabited with her after promise of marriage. If the matter was taken to court, the minister could do nothing but await the result. He could neither issue a certificate of publication nor perform a marriage until the candidates could present proof that the impediment had been removed. A judicial settlement, however, was of rare occurrence and usually the minister was able to arrange the matter amicably without recourse to the civil authorities.

After the publication had been completed, the minister was again supposed to inquire into the matter of disabilities and, if he found none, issue to the betrothed a certificate of publication, which gave them the right to have a ceremony performed. The certificate stated that publication in due form had taken place and that no impediments to the marriage existed.

Since the certificate was issued in the parish where the woman was registered, it was necessary for the minister to know the man's qualifications, should he happen to live in some other parish. The law, therefore, required the man to bring a transcript of the records of his parish, issued by its rector, and containing information as to his name, address, occupation, age, other circumstances affecting his right to have a religious ceremony performed, and a record of previous marriages with the dates and causes of their dissolution. Finally, the transcript had to contain a declaration that its possessor was free to marry. This document had to be presented to the minister to whom the application for publication was made. If the man was unknown, a foreigner, for instance, he had a thorny path to travel. The Ecclesiastical Law of 1686 ruled that if an unknown man applied for publication, he must present to the minister oral or written testimony by trustworthy men, vouching for his life and circumstances. This rule was made still more rigorous by a Royal decree in 1791, which declared that if legal

proofs of such a person's circumstances did not exist, the applicant must insert a notice in the general newspapers of the Kingdom, giving a full statement of the case, including the name and address of the minister to whom information regarding impediments should be sent. If no information was received by the latter within a year, he was free to act.[41] A modification of this ruling was made in a statute of 1898, which declared that "a Swedish man or a Swedish woman, who wishes to marry, but cannot, according to the Ecclesiastical Law, prove the absence of disabilities, shall publish his intentions in a notice, inserted three times in the general newspapers and giving complete information as to his name, age, place of birth, places where he has resided, name and address of the pastor to whom information regarding impediments should be sent, and the time limit for the lodging of this information. This time shall not be shorter than six months if the applicant has lived outside the Scandinavian countries and Finland; in other cases, not shorter than three months from the date of the last notice. If, within this time, the minister in question has received no notice of impediments, nor discovered any other means he may issue banns in due form."[42] This act had obvious drawbacks, particularly for visiting Swedish-Americans, and in 1910 a statute, superseding all previous legislation, stipulated that a Swedish man or a Swedish woman, who applies for publication, may prove ability to do so by a certificate from a minister in the Kingdom or one serving a Swedish congregation abroad. If this were impossible, freedom to marry might be proved; either by the oral or written testimony of two Swedish or alien persons, whose trustworthiness was known to the minister that entertained the application, or who had been vouched for by the Governor, the district attorney, the sheriff, a magistrate, a minister in a Swedish parish, or a Swedish legation or counsel; or, by a certificate from a minister of a foreign church body, if certificates from that body had been declared valid by the King."[43]

Publication in the usual manner could be dispensed with if

[41] *Ibid.*, p. 245.

[42] *Ibid.*, pp. 245-246.

[43] *Ibid.*, p. 247. A Royal decree of Nov. 10, 1911, gave validity to certificates issued by the Evangelical Lutheran Augustana Synod of North America.

the man was called to arms against the enemy or was sent abroad on some public service. In these cases, all three readings could take place on one Sunday or religious holiday, although the ceremony could not be legally performed until two days later. The Ecclesiastical Law provided for a similar publication if one of the betrothed lay on his deathbed, and although the Code of 1734 lacked this stipulation, it was quite generally practised.[44]

The Marriage Ceremony

Some of the Provincial Laws prescribed the date of the wedding, setting one year after the betrothal The Östgöta and Västgöta Laws actually stipulated a legal wedding, day, the Sunday following St. Martin's (Nov. 11th). Late fall was much favored throughout Sweden and a preference was shown for Tuesdays or Thursdays during new or full moon.[45]

"On the wedding day the groom journeyed to the bride's home and there the transfer of the woman's guardianship took place.....The transfer was accompanied by solemn words.....followed by the drinking of toasts. All took place in the presence of relatives and often of the whole village.....To complete the marriage, the journey to the groom's home and cohabitation, proved by witnesses[46], were necessary. On the morning after the wedding night, the husband was to give his wife a morning gift, unless he had cause to send her back. Originally a small, symbolical gift, it often became a large present of land, etc., which she could keep as her widow's portion at the man's death, while if she died it seems to have remained in the man's possession."[47]

We have already noticed that the old Provincial Laws contained traces of the religious ceremony, which the Church

[44]*Ibid.*, p. 272.

[45]Flodström, I., *Sverges folk*, p. 370. "Even today most of the marriages in Sweden take place in the late fall. Thus the marriage rate for 1903-1912, per year and thousand of inhabitants, was, for October, 8.84; for November, 8.97; for December, 12.30; for January, 2.19; for April, 6.81; for June, 6.92, and other months vary between 3.50 and 5.50." *Ibid.*, note.

[46]In Skåne, the southernmost province of Sweden, it was customary for the bride and groom to undress in the presence of the wedding guests. During the wedding night, guests were also supposed to visit the bedroom of the couple. These customs survived to the beginning of the nineteenth century. See Westermarck, E., *The History of Human Marriage*, vol. 2, p. 437.

[47]Flodström, I., *op. cit.*, p. 370.

required. This ceremony had to be conducted according to the ritual of the State Church, since members of alien, i. e., Catholic and non-Christian, faiths did not for a long time have the right to establish congregations or retain a clergy. On January 24, 1781, however, a Royal decree granted such faiths religious freedom, the right to form congregations, and the privilege of having marriages performed in accordance with their respective rituals. This decree was extended the following year to members of the Mosaic faith, limited, however, to marriages within that faith. Since no mention was made of the form of the ceremony to be used by Jews, it is presumed that their time-honored ritual was recognized as sufficient. The restriction, forbidding the marriage of Jew and Gentile, was abolished by a decree of 1863 and at this time a civil ceremony made its first appearance in Swedish law. Such marriages were to take place before certain civil officials, a custom which has since that time been extended to include ever greater groups.

The dissenter law of 1873, regulating marriages between members of Christian but non-Lutheran faiths and between such persons and members of the State Church, and decrees of 1880 and 1898 modified the law until the condition before the passage of the law of 1908 was as follows:

a. The civil ceremony was obligatory when one of the betrothed was a member of the State Church and the other a Jew; when neither belonged to the State Church or an alien faith, to whose clergy the King had given the right to perform marriages; and, when one of the betrothed was a member of the State Church, but had not been baptized nor had received the Holy Supper within the Church, nor religious instruction by a minister of the Church and by him prepared to receive the sacrament upon confirmation.

b. The religious ceremony was obligatory, when both betrothed were members of the State Church, had been baptized there, and had received the Holy Supper; and, when both belonged to some alien faith, whose clergy had the right to perform marriages.

c. Choice between the two could be exercised, when one of the betrothed belonged to the State Church and the other to an alien faith; when both belonged to different alien faiths, in one of which the clergy had the right to perform a ceremony; and, when one was a member of the State Church, hav-

ing neither been confirmed nor having partaken in the Holy Supper in the Church, but, having received religious instruction by a minister of the Church, had been found by him prepared to receive the sacrament upon confirmation; this, of course, on the assumption that he otherwise had a right to have a religious ceremony performed.[48]

These rules were all simplified by the law of 1908, which made the civil ceremony elective to all, while reserving the religious ceremony for the cases when both betrothed were members of the State Church, had received religious instruction from a minister of the Church and by him found to be prepared to receive the sacrament after confirmation; and, when both belonged to an alien faith with a clergy having power to perform marriages.[49] The right to a religious ceremony was denied to members of different denominations, and even when one of the betrothed was a member of the State Church and the other belonged to some foreign Evangelical Lutheran Church, a rather curious distinction.

The limitations made in the law of 1908 were largely due to the work of the clergy. In 1903, the Synodical Congress, in a letter to the King, requested that "steps be taken to make such changes in the present marriage law that all Swedish citizens, for whom the religious ceremony is now obligatory, may be given the right to choose the civil form, if they so desire; and, that rules be made at the same time so that the Church may not, through its clergy, be called upon to celebrate marriages, which would cause good ecclesiastical order and the dignity of the Church to suffer."[50] This question had been raised as early as 1868 by P. P. Waldenström at the first Synodical Congress. He urged that "ecclesiastical publication of banns and a religious ceremony should not be granted to persons, who are unable to marry, according to Matt. 19:9."[51] In 1883, the Congress

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[48] *Lagutskottets utlåtande nr.* 33, 1900, pp. 2-3.

[49] The King granted such power to the Methodist Episcopal Church, in 1876; to the New Jerusalem Church, in 1892 and 1893; to the Roman Catholic Church, in 1895; to the French Reformed Church in Stockholm, in 1895; to the Anglican Church, in 1899; and, to the Rabbis of the Synagogues in Stockholm, Gothenburg, and Malmö, in 1909. See *Lagberedningens förslag etc., I,* p. 283, note.

[50] *Lagutskottets utlåtande nr.* 38, 1904, p. 6.

[51] *Ibid., nr.* 30, 1908, p. 9.

wrote the King requesting legislation to the effect that "a marriage which a person, who had voluntarily caused the dissolution of his earlier marriage, without being provoked by his partner's adultery, desired to enter into during the lifetime of his former spouse, should not be published as a Christian union, nor be given confirmation by a religious ceremony."[52] This desire to exclude certain individuals from a religious ceremony was best expressed in the above mentioned letter to the King, in 1903. The Synodical Congress had entertained a motion asking for legislation, which would close the religious ceremony to "persons, whose marriage was called adultery by Christ, the Lord of the Church, according to Matt. 19:9, Mark 10:11-12, Luke 16:18, and First Corinth. 7:10, and therefore in opposition to the laws of His Kingdom; [and, to] those who openly declare.....that they do not believe in the teachings of the Church or in Christianity."[53] The Congress expressed itself entirely in sympathy with the second part of this motion but doubted the advisability of recommending the first part, since it, from the point of view of the state, would make the civil ceremony a punitive measure for the persons in question and would moreover establish dual legislation. This letter, together with a communication from the Riksdag of 1904, asking for a revision of the law, finally led to the statute of 1908.

The form of the ceremony. As to the form of the ceremony, the Provincial Laws contained some provisions. Upon the groom's arrival to the house of the guardian, feasting began and the groom afterwards called upon the guardian to make his "gift-speech" (*giftomal,* now found in the Swedish *giftermål,* marriage). The latter then gave his daughter to the groom with words like these, prescribed in the Country Law and the Provincial Law of Uppland: "I give you my daughter to be your wife; I give her to your honor and to half of your bed, to lock and keys and to one-third of all you own or acquire in the form of chattels, and to all rights found in the Law of Uppland given by Saint Eric; in the name of the Father, the Son, and the Holy Ghost."[54]

The Church rituals of pre-Reformation days in Sweden

[52] *Ibid.*
[53] *Ibid., nr.* 38, 1904, p. 3.
[54] Flodström, I., *op. cit.,* pp. 468-469.

showed that the ceremony consisted of two parts, the first of which took place at the church door and consisted merely of a repetition of the betrothal vows to assure the priest that there was mutual agreement to the union; the bridal mass was then read in the church. The ritual of 1529 gave the ceremony a somewhat changed form and in 1614 a new ritual appeared, containing for the first time an actual declaration of consummation by the minister. The ceremony was also, in its entirety, transferred to the church proper and was preceded by exhortations to the couple, similar to those formerly read at the betrothal.[55]

According to the Code of 1734, the marriage ceremony was to be performed by a minister of the Swedish Church. If some one, not a minister of this Church, performed it, the law suggested that it be followed by a legal, i. e. religious ceremony, if the marriage was permissible. Failure to have publication made in due order seems not to have invalidated the ceremony. Although the law did not specifically prescribe it, the following omissions have been regarded as nullifying the ceremony: failure on the part of one of the betrothed to be present, and conditional agreements to marry.

The celebrant must demand a certificate of publication before performing a marriage. If publication had been made in due fashion, it was not incumbent upon him to make an inquiry regarding impediments, although he had no right to perform a ceremony if he knew of a disability, even though a certificate of publication may have been issued. The fact, however, that the certificate was perpetual made it sometimes hazardous to perform a marriage, since disabilities might have arisen after the certificate was issued.

The law of 1908 required the marriage of members of the State Church to be "performed by a minister of the Church, according to the directions found in the Manual of the Church."[56] The marriage of members of any other church organization was to be performed by one of its ministers according to the ritual of that Church. The civil marriage was to be performed "in the presence of relatives or other witnesses. The official shall demand the man's and the woman's affirmative consent and declare them husband and wife.[57]

[55] *Lagberedningens förslag etc., I*, p. 82.
[56] Hedrén, T., *Lagtima riksdagen* 1908, p. 92.
[57] *Ibid.*, p. 91.

The necessary elements of the ceremony were, therefore, the presence of both betrothed before the celebrant, their affirmative consent, and the declaration making them husband and wife.

After the ceremony it was necessary to register the marriage in the parish record where publication was made, no matter which ceremony had been used. In the case of the religious ceremony, this was the only official record made of the marriage, but in the case of the civil ceremony, a special record was to be kept by the civil celebrant as well. This record was to be signed by witnesses, if the marriage took place before a magistrate or the district attorney. The civil marriage was, consequently, registered twice.[58]

[58] *Ibid.*

CHAPTER TWO

THE DISSOLUTION OF THE MARRIAGE

Annulment

According to the Canon Law, the following omissions or commissions nullified a marriage: failure to comply with the legal forms in entering the marriage; failure on the part of either candidate to give binding consent, due to lack of legal power to act, or due to force, deceit, or mistake; and, failure to respect the Canon Law disabilities. All such unions were regarded as having never taken place, unless the legal forms had been carefully followed, in which case they were voidable and not null *ab initio*. If one or both candidates acted in good faith, the children of the union were considered legitimate and the innocent candidate given about the same rights at civil law as if the marriage had been perfectly valid.

Early laws in Sweden make no distinction between void and voidable marriages. The Church Constitution of 1572, in its chapter on Divorce, stated, "In every case, when marriage is concluded without law or permission, it shall be regarded as invalid or null."[1] The Ecclesiastical Code contained practically nothing to indicate that the principle expressed in the Canon Law had been fully understood. Nehrman, in his "Inledning til then swenska jurisprudentiam civilem," published in 1729, made a clear distinction, however, between annulled marriages and those dissolved by divorce. As grounds for annulment he mentioned certain stipulations in the Ecclesiastical Law, such as bigamy, impotence existing at the time of the marriage, forced marriage, marriage deceitfully celebrated, and marriage entered into by mistake in regard to the virginity of the bride.[2]

The Code of 1734 contained a statement of principle to the effect that if a minister celebrated a marriage between

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[1] *Lagberedningens-förslag etc., I*, pp. 309-310.
[2] *Ibid.*, p. 310.

persons not allowed by law to marry, the marriage was void.[3] It apparently referred to the impediments caused by relationship, lack of guardian's consent in some cases, and adulterous relations between the candidates. The law explicitly mentioned absolute adultery and since it also mentioned that no one could be forced into a marriage, it is natural that a forced marriage was regarded as null, particularly since a forced betrothal was so considered.

If a candidate for marriage had an incurable or infectious disease, which he deceitfully concealed while "tempting" some one to marry him, the marriage was null and void and the culprit lost all material property rights in the estate and was assessed damages in addition. Of course, only the deceived spouse could apply for annulment on this ground, unless the other proved that he lacked his full mental powers at the time of the marriage.

Marriage by mistake or through deceit could be annulled only if either spouse, during the betrothal, had had sex relations with some other person than his bethrothed; if the *woman* had had such relations with some other man *before* the betrothal; if either spouse was unable to perform the marital function[4] or had an incurable or infectious disease; or, if the man had deceived the woman into marrying him by misrepresenting his name or status.[5] The children of all annulled marriages were regarded as legitimate but the woman was not allowed to retain the man's name.

On the whole, the question of void marriages was never definitely settled until the present law was passed. In previous laws, the paragraphs dealing with them were not even found in the same chapter. The opinion of the Law Commission that "the legislation did not appear to have reached any consequential or clear attitude in the matter" was indeed justified.[6]

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[3]All such marriages seem not to have been considered null. Persons, who married within the legal period of mourning or before the assignment of the inheritance, did not suffer annulment of their marriage.

[4]Actual inability was meant, not sterility.

[5]Chapter 13, paragraphs 7 and 8, chapter 4, paragraph 6, *Giftermålsbalken. Sveriges Rikes Lag.*

[6]*Lagberedningens förslag etc., I,* p. 311.

Separation and Divorce. The individualism, which marked the civil justice of the Romans showed itself in their marriage institution. The free marriage, which came into common use during the Empire made a divorce by mutual agreement possible. The Mosaic Law and the older Teutonic laws recognized this privilege for the man alone, while later Teutonic laws included the woman as well.

The Christian Church did not share this point of view. Marriage, being ordained by God, was a sacrament, which could not be broken. In accordance with the teachings of Jesus and St. Paul, it became, however, customary to permit separation on the ground of adultery, but the marriage bond could not be dissolved except by death. This ideal the Church tried to realize in Sweden by a letter from Pope Alexander III in 1161, which pointed out that, "according to God's command and the apostolic teachings, a man shall not separate from his wife except in case of adultery, and that if he for such cause desert her and marry another during her lifetime, he shall be regarded as an adulterer."[7] It is doubtful if the Church succeeded in carrying out this doctrine in Sweden, at least during the early Middle Ages.

The Reformation brought a change of attitude. To the Reformers marriage was not a divine institution and therefore not indissoluble. Since Jesus, according to Matthew, permitted divorce on the ground of adultery, the reformers held that the Master Himself did not regard marriage as binding for life. They regarded adultery and malicious desertion as grounds for divorce and these grounds were found in both the Church Constitution of 1572 and the Ecclesiastical Law of 1686. Jurisdiction was vested in the cathedral chapter, although the Ecclesiastical Law pointed out that the civil courts were to act first by meting out the punishment and determine upon the other consequences at civil law.

In addition to this absolute divorce, the Ecclesiastical Law also mentioned a limited divorce or separation for a definite time "from bed, board, abode, and company." This separation constituted the last link in a long chain of events, which although commonly practiced had not heretofore been given legal sanction. It was preceded by warnings from the rector and the cathedral chapter, imprisonment or other punishment

[7]Quoted by *Ibid.*, p. 370.

imposed by the courts, and, finally, separation, decreed by the cathedral chapter, publicly proclaimed in church, and followed by excommunication. These steps were taken in instances where hatred, bitterness, and anger, had arisen between husband and wife; they were not to be considered a substitute or a necessary prerequisite for a divorce. On the contrary, separation was a form of punishment designed to hasten reconciliation.

The Code of 1734 reflected about the same point of view. It contained only two grounds for divorce, adultery and malicious desertion. The courts tested the cases and the cathedral chapter, bound by the decision of the court, issued the letter of divorce. In case of adultery, the mere admission of guilt on the part of the offender was not sufficient; definite proof was required. The petitioner must not have been an accessory, nor must he have forgiven the faithlessness of his spouse. Express forgiveness was not required, cohabitation after learning of the faithless act being interpreted by the court as forgiveness. To receive consideration, the petition must be presented within six months from the date the petitioner learned of the fact. In case he himself had been guilty of faithlessness, his petition lost its force. Should the innocent spouse fail to begin action, the district attorney was empowered to do so.

Desertion was considered a ground for divorce only when the deserter, "out of malice and aversion," had left for parts unknown or had gone to a known place abroad with no intention of returning to his family. If he had left for an unknown place and divorce had been applied for on that ground, the court was instructed to have notices read in the churches of the nearby counties and parishes, exhorting the deserter to return within a year to appear before the court. Before ordering the reading of such notices, however, "the judge must have received assurances through the clergy that the person in question had really deserted his spouse; he must also have made inquiries as to his whereabouts, the causes for his absence, and the tenor of his earlier family life."[8] Failure to heed the summons of the court caused the divorce to be granted.

[8]Royal letter of Feb. 4th, 1818. See *Sveriges Rikes Lag.* Schlyter's ed., 1886, p. 17.

If the husband left home with the intention of returning, yet remained away, the deserted wife could receive permission to remarry after six years or earlier, if the court, after due investigation, deemed it proper. A divorce, however, could not be granted her. The result was that if the absent husband returned and gave valid excuse for his absence, showing that he was unable to communicate with his wife, he could resume his place at her side, while the second husband had to leave, unless it was otherwise agreed. Upon withdrawal, the latter was free to remarry.[9]

As to the treatment of quarrelsome couples, the law provided either fines, twice imposed, if husband and wife could not live peaceably together after being given warnings; or, separation from bed and board, which was to go into effect if the former punishment failed.

After the passage of the law of 1734, it became customary for the King to grant absolute divorce by dispensation to people, who had already been granted separation from bed and board. This practise was embodied in law by a decree of 1810, which materially enlarged the opportunity for severing the bonds of matrimony. It was stipulated that divorce could be gained, either by court decision or by Royal dispensation. Upon the petition of either spouse, the court could grant a divorce if the petitioner's spouse had been sentenced to life imprisonment or exile, or had been found by the court to have plotted or staged an attempt upon the petitioner's life; if he had become insane and had remained so uninterruptedly for a period of three years without any hope for permanent recovery; or, if he were guilty of adultery or malicious desertion. The decree did not give, in any definite manner, the instances when the King could act. The general rule was that an appeal for divorce by dispensation might be made "when other causes appear", i. e. for any cause deemed sufficient by the King.[10] The decree mentioned, specifically, the following grounds: a death sentence or permanent loss of civil rights, even though the King may have granted a pardon or restored the rights in question; a sen-

[9] *Sveriges Rikes Lag. Giftermålsbalken,* chapter 13, paragraph 6.

[10] Of course, wherever the King is referred to in this monograph, it is to be remembered that his dispensations and decrees etc. are not personal, but decided by some government department or official and issued as an administrative order.

tence for some brutal or deeply dishonoring crime; a sentence to penal servitude for a certain number of years; wastefulness; drunkenness; violent temper; and, a difference in temperament and opinion, which, after numerous eruptions, gradually turns into disgust and hatred. [11] With the exception of the first of these grounds, a Royal dispensation did not lead to an immediate divorce, unless all the various degrees of warnings mentioned in the Ecclesiastical Law had been employed. Important is the fact that the old concept of guilt, as necessary for a divorce, had partially disappeared. In many cases, mutual feelings of hatred implied no guilt on the part of either spouse, nor did insanity.

A decree of 1860 greatly modified the procedure in respect to "quarrelsome couples". Such couples were to be warned by the rector of their parish, either when he learned of their disagreements or when they petitioned him. If his warnings carried no weight with them, they were summoned to appear before the deacons. Should this have no effect on their relationship, the court was to grant a year's separation from bed and board. If found desirable, the court could at the same time, on pain of imprisonment, forbid any communication between the spouses during this period.[12]

Separation from bed and board did not mean a division of the property. In each separate case, the court determined what action should be taken in regard to the joint property and to what extent mutual support should be granted. The disposal of the children was also effected by the court. Divorce, on the other hand, gave to each spouse the right to withdraw his private property, while the joint property was shared according to their respective marital property rights. There were some exceptions to this rule. In case of adultery, for instance, the guilty spouse lost half of his marital property to the other and in case of desertion or when one plotted the other's destruction, the innocent spouse had a right to all the property. No duty existed on the part of either spouse to support the other after the divorce had been decreed, except when insanity had formed the ground for the divorce, in which case the petitioner was duty bound to contribute, in part at least, to the support of the insane spouse.

[11] See *Sveriges Rikes Lag.* Schlyter's ed., 1886, p. 18.
[12] *Ibid. Giftermålsbalken*, chapter 14, paragraph 1.

In all cases, the court determined the disposal of the children.

To summarize, then, separation was granted only in case the family life had become intolerable due to a growing ill feeling between husband and wife. It was preceded by warnings from rector and deacons, and if the year's separation decreed by the court did not succeed in uniting the couple, the separation was made absolute by Royal dispensation. Absolute divorce could be gained either by court decision or by Royal dispensation. The court acted in case of adultery, desertion, plots against or attempts upon the life of the petitioner, life sentence, unless the petitioner was the cause of or an accomplice in the crime, and uninterrupted insanity for three years. Royal permission could be had for "other causes", of which the law specified several already mentioned. In addition to these, the King could grant divorce on any ground deemed sufficient.

The dissolution of marriage by divorce made it impossible for the persons involved to remarry until a letter of divorce had been issued by the cathedral chapter. Originally, the divorce was not considered legal until this letter had been issued, but in late years, the legal effects have been regarded as dating from the court decision. If a divorced person wished to remarry, it was necessary to present the letter of divorce or no publication of banns would be made. There was one exception. In 1795, a Royal letter stated that for members of alien faiths a letter of divorce was unnecessary. Even in this instance, however, the judge should refer the applicants for banns to the spiritual head of their congregation. With the institution of civil marriage, this practise disappeared.

In the course of time it became apparent that much was needed to make the divorce law better adapted to a changing society. In 1879, the Riksdag asked the government to revise the entire divorce law, particularly since the ground of malicious desertion had become much abused. The law, as we recall, required the deserter to leave for an unknown place or a known place abroad. Since Copenhagen was regarded as abroad, it had become a Mecca for "deserters", whose absence from wife and children gave the former a valid ground for divorce, which could be gained in a few weeks. In 1888, the Synodical Congress asked the govern-

ment for legislation, which would prevent divorces by mutual agreement, which undoubtedly was the real ground in most desertion cases. Nothing was done. In 1899, the Riksdag again asked for revision of the law, supported in its request by the cathedral chapters. In 1903, the Synodical Congress reminded the government of this request, and in a communication four years later, the Solicitor General stressed the necessity for revision, because the practise of the courts had made divorce the prerogative of the rich, while the procedure for dealing with quarrelsome couples had led to much abuses and serious difficulties. A second communication from the Solicitor General, in 1909, arrived, however, before the government took steps to instruct the Law Commission to begin work on a new marriage and divorce law.[18]

[18] *Lagberedningens förslag etc., I*, pp. 379-383.

CHAPTER THREE

THE LEGAL STATUS OF THE WIFE

The best single index to a nation's social progress is probably the position of its women, socially, economically, and politically. In Sweden, development in this respect was not very rapid until about seventy-five years ago. From that time on, however, both the unmarried and the married woman's status has undergone revolutionary changes.

In Teutonic countries, not the individual but the family as a unit was considered when legislation affecting its members was passed. The old Scandinavian family had many things in common with the patriarchal family of the Romans. The marriage, which transferred the guardianship over the wife from her father to her husband gave her only limited powers, the husband being looked upon as the representative, spokesman, and guardian of the entire family group. In this capacity, he managed all property belonging to himself or brought into the family by his wife. His power was gradually somewhat circumscribed in order to protect her interests, and she became joint owner with him of the property. This situation was reflected by all the Provincial Laws with the exception of the Law of Gottland, which contains traces of a dotal system, according to which the dowry was the private property of the wife, administered by her husband while the marriage lasted and reverting to her family, when the marriage was dissolved by death or divorce.[1] As part owner of the estate, the wife had a right to one-third of the joint property, which consisted of land and chattels acquired during the marriage. Originally, the wife was given joint ownership in chattels alone, as indicated by the marriage formula in the Law of Uppland, mentioned in the first chapter.

The Country Law made no changes in the property rights of a wife under its jurisdiction. The Borough Law, however, equalized the property rights of spouses, giving the wife a right to half of the joint property. These laws also consid-

[1] *Lagberedningens förslag etc., IV*, p. 130.

ered personal property, such as clothing, etc., private in nature, but if the wife died, her personal belongings went to her husband. Her dowry and the morning gift remained her private property, the latter belonging to her heirs, if she died.

The older laws did not differentiate between private and joint debts; all debts were regarded as joint. The later Provincial Laws, however, segregated debts incurred in the form of fines, and still later those due to wastefulness, gambling, etc., all of which were to be paid by the guilty spouse alone out of his private property or his share in the joint property. As a protection for the wife, a Royal letter of 1669 gave instructions that the husband's pre-nuptial debts were not to be paid out of her property, unless she had made herself jointly liable with him for the payment of the debt.[2]

The Code of 1734.

In view of the statement that "when a man and a woman have married, he shall be her spokesman and shall represent her except in the matter of property withdrawn from his control,"[3] the Code of 1734 still recognized the legal superiority of the husband. Unable to make a contract for the sale of her own property and unable to become legal security without the consent of her husband, in addition to many other legal disabilities, the wife's condition was but slightly improved. The law now recognized as valid a will drawn by the wife. The Law Commission points out that "her independent rights as housewife....were not defined in the law." Only if her husband was out of his mind, absent, or had deserted her, could she dispose of property to buy the bare necessities of life. Even then, the law required her to take counsel with her relatives before selling real property. It was not explicitly stated that she was her husband's ward, but in reality this was her position.[4]

The difference between the Borough and the Country Laws, with respect to property rights of spouses, was maintained. The former gave them equal property rights in real estate or waterworks on the town's land, whether acquired before or after the marriage. The people of the countryside were governed by the Country Law, which gave the husband

[2] *Ibid.*, p. 135.
[3] *Sveriges Rikes Lag. Giftermålsbalken,* chapter 9, paragraph 1.
[4] *Lagberedningens förslag etc., IV,* p. 136.

the ownership of two-thirds of all the joint property. This property consisted of real property and chattels, jointly acquired by the spouses. The control of the property remained in the husband's hands and any pre-nuptial agreement limiting his power in this respect was invalid. The only legal restraint upon him was the old Provincial Law prescription that he could not "give away, pawn, or sell his wife's real property in the country, or land or house of hers in the town, without her voluntary, oral and written, permission, given in the presence of witnesses, or orally given to the court."[5] Only in case her husband deserted her or if separation from bed and board had been decreed, could she become the guardian of her own children and exercise control over the property.

The law provided a greater protection for the wife in its careful stipulations regarding the responsibility for debts. Pre-nuptial debts and private debts had to be paid out of the property of the debtor spouse and if he used the other's property for this purpose, the law gave the injured spouse, usually the wife, a right to compensation.

In order to provide some balance between the economic advantages of the spouses and give the widow a means of subsistence, the law prescribed a morning gift for the wife. This gift was to consist of real property or chattels, not both. If it was given in the form of real property, it could not exceed more than one-third of the husband's share in such property. If it was less, his heirs were required to make up the difference. If it was given in the form of chattels, the wife had a right to one-tenth of her husband's share in the chattels, and in this tenth she received title. A morning gift in the form of real property could be used by her only during her life time or while she remained unmarried. At her death or remarriage it reverted to her husband's heirs. In 1845, the rules regarding the morning gift were modified and the Borough Law provision, which gave the widow no right to the morning gift if she had children, was made general.

The institution of separation of property was created as a further safeguard for the wife's interests. To begin with, this separation was an integral part of the bankruptcy proceedings. The Bankruptcy Act of 1818 thus gave the wife a means of protecting her share in the estate from her hus-

[5] *Giftermålsbalken*, chapter 11, paragraph 1.

band's creditors. Upon her petition, the court could decree that her property be segregated from the estate and placed under the control of a trustee. The husband was, however, permitted to act in this capacity, a situation which often led to the annulment of the separation. Finally, the separation of property became quite independent of the bankruptcy proceedings. An act of 1862 gave the wife the right to appeal for such separation on several grounds, the most important of which was the failure of the husband to exercise his guardianship in a proper manner. The separation of the property caused, of course, the disappearance of the joint property. All debts contracted by either spouse were, with some exceptions, to be considered private debts and the wife was made responsible for the payment of debts incurred in the conduct of her business, if she had one, and for the payment of fines and damages in suits against her. She could not yet manage her own private property but had to place it in the hands of a trustee.

The growth of the demand by women for independence made itself felt in the last half of the nineteenth century and the married woman's status became particularly ambiguous after 1858, which marked the independence of the unmarried woman at twenty-five.[6] From 1862 to 1873 not fewer than seven sessions of the Riksdag entertained motions to remove the husband's power of guardianship and give a wife the right to control her own property. The only visible effect was a communication from the Riksdag to the government in 1871 asking that a revision of the law be made in order to enable the wife to get controlling powers over her own propperty by a pre-nuptial agreement. Instead of revising the entire law, a decree was issued in 1874, giving the married woman, for the first time in Sweden, a right to control her own marital and private property and all property acquired by her own labor, if this right was settled by pre-nuptial agreement. She could dispose of her property at will, and in suits regarding her property, she and not her husband was defender or plaintiff. A wife, who had taken precautions in accordance with this decree, was not forced to turn her property over to a trustee.[7]

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[6] In 1884 lowered to twenty-one.

[7] *Lagberedningens förslag etc., IV*, pp. 143-4.

The year 1874 saw another step forward in the emancipation process. Due to the work of the "Society for the Married Woman's Property Rights", Sweden became the second European country[8] to grant the married woman a right to her own earnings. This organization had also worked consistently to break up the system of joint ownership and thereby free the wife from her dependence upon her husband, which his position as sole manager of the property made possible. Repeated efforts resulted in a law, which, in 1898, excepted from the joint property any property acquired by a spouse before the marriage or later inherited. In addition, it was made possible for husband and wife to gain separation of the property by mutual consent. Such separation, once decreed, could not be annulled. Although the husband's power was somewhat reduced, he still remained in control of the property, but in addition to needing his wife's consent for the sale of real property, he was also forced to ask her permission for cutting wood on her land, etc. The law also made some changes in the rules governing the responsibility for debts.

The question of the married woman's inferior position was again brought to a head during the session of 1903, when a letter to the King was prompted by motions in both Chambers that the husband's guardianship, which he exercises over his wife, be abolished, but that the husband nevertheless retain his controlling power over the family property and his right to represent the family. Besides, there should be an express statement that a wife becomes of age at twenty-one, subject to the limitations imposed by the representative and administrative powers of her husband.[9] Again, in 1908, the Riksdag sent the King a communication asking that a law be prepared giving the married woman the right to be appointed the guardian of her husband, in case the latter had been deprived of his majority privileges by court action. In 1909, the Law Commission was ordered to take up the work of revamping the entire marriage act in the light of modern knowledge and the social development of the country. The result was the new marriage law, of which the part dealing

[8]England passed such a law in 1870.

[9]Staël von Holstein, M., *Målsmanskapet och kvinnans ställning inom äktenskapet enligt gällande svensk rätt*, pp. 35-36.

with the economic position of the wife was submitted to the government in 1918.

Before the law of 1920 went into effect, the status of the wife, as far as the law was concerned, was, in spite of improvements, rather unfavorable in many respects, giving unmistakable evidence of the double standard, which the present law has succeeded in abolishing. She, first of all, followed her husband's estate in life; if he for some reason or other became poor, she was obliged to accept this fact with resignation, even though he might have been the cause of the poverty. Her husband's nationality was hers, and the choice of domicile was in his hands. Her only right to refuse to live where he determined to live depended on wheather or not his decision would cause her life to be placed in jeopardy, expose her to injustice, or force her to move abroad. In the last mentioned case, she could refuse to comply with his wishes only if his business at the time of the marriage was not likely to take him abroad or if he was not appointed to some official position which necessitated foreign residence.

A wife was in duty bound to expend her energies and efforts for her family and her home, in accordance with her husband's wishes. This meant that she could not accept outside work without his permission, unless the needs of the family made it imperative. Although the law gave him no power to compel her to follow his wishes, he could refuse to support her or could ask the clergy to "warn" her, the first step toward separation from bed and board. With her husband's permission[10] she could conduct a business or engage in other profitable employment, but if he were legally disqualified to engage in business (due to official position as custom officer, public prosecutor, or tax collector) she shared his disability, even though she may have had his permission. If she failed to heed her husband's refusal, she could be fined like any other individual, who conducted a business without license. When she worked lawfully, i. e. with her husband's permission, her earnings belonged to her, although it is not certain that what she purchased with these earnings became hers to do with as she chose.

A married mother had nothing to say in the bringing up of her own children, i. e. the law gave her no such right.

[10]The industrial and commercial acts of 1846 prohibited a woman to engage in business without her husband's permission and security.

Her husband was their guardian until they reached majority, chose their life's work, and gave away his daughters in marriage. If he abused his guardianship, the court could appoint some one else guardian, but in no instance could the mother be so appointed while the family remained undisrupted. She was thereby classified with "feeble-minded persons, heavy debtors, spendthrifts, enemies of the child, persons not yet twenty-five years of age, or so old and crippled that he can not discharge his duties as guardian, etc."[11] Only in case the husband went insane, deserted his wife, or for other reasons was unable to exercise his guardianship, could she be substituted, and if he died, she took his place as guardian of her children—until she remarried. In case husband and wife belonged to different religious faiths, the former decided in which faith the children should be brought up.

As a rule, all the property of the spouses was joint, since in the majority of marriages no private property or income existed. Of this joint property the husband was the sole manager. His administrative powers extended even to his wife's private property, with the exception of her private real property. He decided upon the amount to be spent for the household expenses, for the education of the children, and even for his wife's personal needs. The latter had no right to demand anything from her husband, except necessities, even though she may have been the source of the entire family fortune. Most important of all, perhaps, was the fact that no matter how he managed the joint property, he owed his wife no accounting.

A husband could not dispose of his wife's real property without her written permission, witnessed by two impartial persons, or orally given to the court. Without such permission he could not cut timber on her land or sell clay or sand etc. from it. If his management was unsatisfactory, she could apply for separation of property on that ground or on the ground that he had abused his powers as her representative. She might even ask the court to place him under guardian on the charge of wastefulness, and if court action to that effect followed, she had a valid ground for divorce.

Corresponding to the husband's position as the external representative of the family, the wife had nominal charge of

[11]Staël von Holstein, M., *op. cit.*, p. 9.

the internal affairs, the domestic economy of the home. She had the power to purchase, even on credit, what was necessary for the maintenance of the physical welfare of the family and other personal needs, in addition to material and tools for domestic work. She could also sell these things, when they had lost their usefulness to her, and dispose of the products of the domestic work, which the family could not consume. The hiring and firing of servants, the payment of their wages, etc. belonged in her province. What she, in the capacity of housewife, undertook to do bound her husband as well. For instance, he was legally bound to pay debts contracted by her in the exercise of her housewifely duties. But—her powers were entirely dependent on her husband's good will. She could perform no administrative act without his express permission. If she bought groceries on credit against his order, for instance, he did not have to pay the bill, unless the grocer was unaware of his order.[12]

A wife could become the manager of the estate in case her husband became incapacitated or deserted her, or, if separation from bed and board was decreed and she was left in charge of the property while the separation lasted, i. e. for one year. In the former case, she could sell chattels to meet the necessary expenses of the household but not real property except by permission of the court and after consultation with her relatives.

A wife could also make debts, which were secured by her private property and her marital property, in case it was a private debt, and by her private property alone, in case it was an administrative debt. She could not, however, become security with legal effect unless she had her husband's permission. If her husband unlawfully used any of her private or marital property, she could be compensated for her loss when the estate was divided, either after her husband's death, or when the separation of the property took place. Her right could also be protected by prenuptial agreement, in which case she might even control all her property and become in a large measure independent. Naturally, there was a great deal of hesitancy about having such agreements drawn up, since it seemed to imply that a woman did not trust the man she had chosen as her husband. Her position

[12]Stjernstedt, G., *Den svenska kvinnans rättsliga ställning*, p. 37.

became more difficult by the law's provision, which required that, to be valid, the agreement should be prepared immediately before the marriage took place and given to the court within a week after the wedding. · In spite of this, however, late years have seen an increase in the number of pre-nuptial agreements, particularly in the cities. From 1861 to 1865, inclusive, pre-nuptial agreements were made in only 1.89 percent of the marriages, while for the period 1901-1905 the percentage had risen to 3.64, the figure for the countryside being 2.24 and for the cities, 7.36. From 1910 to 1915, 4.70 percent of the marriages in the country as a whole had been preceded by such agreements, the percentage for the cities being 13.10 and for the countryside 3.03. Of course, the man in the street was not very much in evidence in these figures, the percentage of agreements preceding the marriages in the group containing by far the great majority of the people, agricultural workers, laborers, and common soldiers, being less than two percent.[18]

Most of the pre-nuptial agreements have dealt with the separation of property. Such separation could also be gained after the marriage, either upon joint or individual petition. If the petition was joint, the court granted it without further ado. The wife could petition for separation of the property in case the estate had such large debts that they could not be paid without using her private or marital property, in spite of the rules regarding the responsibility of spouses for debts; if there was a danger that the payment of the debts of the estate would result in her losing her chance to receive compensation, to which she would be entitled at the division of the estate; if bankruptcy proceedings were started against her and her husband; if her private property or the joint property, which she could control (such as her own earnings), had been used to pay debts which such property did not secure, or if such property of hers had been pawned; if her husband had unlawfully disposed of her private property or their joint property; if her husband had burdened the estate with debts without corresponding benefits, or in other ways mismanaged the affairs of the estate; if he had abused his powers of guardianship; if he had deserted her and had been gone for six consecutive months; or, if he had been

[18] *Lagberedningens förslag etc., IV*, pp. 519, 524-525.

placed under guardian. The separation had the effect that all property, acquired after the division had been made, became private, which meant also that from that time on all debts were private. Husband and wife were financially divorced in the eyes of the law, although it was still impossible for them to institute civil suits against each other, make contracts with each other, or give each other gifts, rules which were designed to minimize the chances for fraudulent actions.[14]

The husband's power of guardianship gave him the right to represent his wife in court, except in civil suits dealing with property administered by her or in criminal suits against her involving serious crimes. In the latter case, husband and wife were jointly indicted. The representative power of the husband gave him also the right to act for his wife at stockholders' meetings, etc.

This survey, imperfect as it is, shows that before the passage of the new marriage law, the married woman in Sweden had succeeded in gaining relatively few concessions, which somewhat differentiated her legal status from that of a minor child or an adult under guardian. Although it is true that the last half century has seen a great change in the attitude toward the woman as unmarried, wife, and mother, it was not until 1920 that she was given her economic freedom, after years of active and determined warfare conducted from lecture platforms and through the medium of numerous books and pamphlets, under the generalship of women, whose names have become familiar far outside their native country, from the pioneer days of Fredrika Bremer to the days of Ellen Key.

[14]Stjernstedt, G., *op. cit.*, pp. 51-2.

PART TWO

The New Marriage Law

CHAPTER FOUR

THE ENTRANCE INTO MARRIAGE

Shortly after the peaceful revolution of 1809, the work of remodeling the old civil code was begun. During the latter half of the nineteenth century, however, the Law Commission was inactive and it was not until 1902 that a new commission was appointed for the purpose. It was to devote its efforts to the civil code and its first work was the revision of the Land Law, which was ready in 1909. In December of that year, the Government instructed the Commission to begin work on the Marriage Law, with all the laws pertaining to it, and those portions of the Law of Inheritance, which could be suitably treated in the same connection. The value of cooperation with the other Scandinavian countries to insure uniformity in this matter, which vitally affected all of them, was suggested, probably because a few weeks earlier a preliminary conference had been held for the purpose of discussing the advisability of inter-Scandinavian cooperation in this field. At this conference it was argued that the proximity of the countries and the extensive traveling had made communication so easy that is was highly desirable to cooperate in the production of a uniform marriage law, in particular the parts dealing with impediments to marriage, the marriageable age, and, most important of all, the legal status of the wife in the family.

In August, 1910, the Government instructed the Commission to meet with the delegates from Norway and Denmark to draft the parts of the law dealing with the impediments to marriage and the annulment of marriage, and the following year the Commission was further instructed to add the rest of the law suggested by the preliminary conference mentioned; in 1912, the methods of consummating the marriage, etc. were added. The Commission comprised some of the finest legal minds in the country, a statement which holds equally true for the membership of the Norwegian and Danish Commissions. Numerous meetings were held in all three coun-

tries and although it was found impossible to reach complete uniformity in all sections of the law, due to the great deviation of former legal practice, remarkable progress was made. Parts of the law dealing with medical questions, such as venereal disease forming an impediment to marriage, the marriage of epileptics, etc., were submitted to the Royal Medical Board and the Medical Faculty of the University of Uppsala for criticism and advice. For other parts, special experts were consulted.

In 1913, the work of the Commission had progressed far enough to enable it to present to the Government a draft of a law regarding the entrance into the marriage and the dissolution of the marriage bond. While this law was under consideration and after its passage in 1915, the Commission continued its work on the question of the wife's legal status in the family until a law, embodying the results of these efforts, was presented to the Government in 1918 and passed by the Riksdag in 1920.

The Law of 1915.

The Marriage and Divorce Law, the draft of which was presented to the King in 1913, was embodied in a Royal Proposition to the Riksdag of 1915. It created a discussion, which was by no means limited to the halls of the legislature. The greatest opposition to this "insult to good old Swedish troth and faithfulness", which would cause the "destruction of the state of holy matrimony", probably came from the clergy.

It was evident to everybody that there would be violent opposition to a measure which made such sweeping changes. When the Law Council[1] listened to the reading of the law, it stated "that on account of the extraordinary importance of this field of legislation and because different points of view and sometimes different customs have developed in the practice which the law attempts to regulate, it is to be expected that in many quarters the new law will meet hestitation and not infrequently opposition."[2] This fear was well founded. More than once, speakers in the Riksdag verbosely expressed their opinions that the law was "chemically free from ethical

[1]Three justices of the Supreme Court and one of the Administrative Court, appointed to pass on the constitutionality and the formulation of all proposed laws and to report on the proposals for initiation, repeal, amendment, or explanation of all laws and decrees.

[2]*Kungl. Maj:ts Proposition nr.* 18, 1915, p. 50.

principles", "savored of looseness", and encouraged "selfishness" while "placing a premium on failure to live up to a sense of duty."

In the First Chamber the law was championed by the Minister of Justice, His Excellency Hasselrot, who introduced it in a speech on May 8, 1915. The substance of his address was as follows: "The proposed law builds in the main on an existing foundation, the foundations of current conceptions of justice. With tenderness and care the many antiquities, the clumsy forms, which often humiliated unfortunate people, have been removed. At every step forward, the importance, yes, the necessity of complete upholding the sacredness of marriage, has constantly been the guide."[3] He also pointed out the long felt necessity for a revision of the one hundred and eighty-year old law, which had remained virtually unchanged in spite of the rapid social progress of the country. The changes that had been effected had been built on principles, different from those on which the old civil code rested with the result that the law in force presented a conglomerate of provisions, which failed in perfect agreement, an absolutely necessary trait of a good law. Worse than that, however, was that "the law no longer expressed the views current among the people..... Such a situation carries a danger for the authority of the law and for the maintenance of justice. It is time that the law is brought into harmony with the popular ideas of justice. That is the only road we can travel to protect the family, the foundation of our entire social order. A contrary behavior might lead the people to choose other forms than a family founded on marriage for the mutual relationship between man and woman, having for its purpose the propagation of the race. The proposed law is largely a codification of what has already been incorporated in the public sense of justice and which has to a great extent received expression in our social life side by side with the law or even in direct opposition to it."[4]

Betrothal

The two chapters, which attracted the greatest opposition and criticism were the ones dealing with betrothal and divorce. According to the old code the betrothal was a formal act and could not lightly be

[3] *Första Kammarens Protokoll, nr.* 63, 1915, pp. 12-14.
[4] *Ibid.*

broken. The fact that it formed a bar to a new marriage so long as it was undissolved by ecclesiastical action was its most important feature. The Commission was of the opinion that the betrothal had, in the course of time, become a mere preparatory agreement, an engagement, and that "since its main reason for existence was to afford persons, who intended to marry, an opportunity to learn to know each other, unfettered by conventions," it was no longer suitable for that purpose since it, in principle at least, excluded freedom of choice and bound the participants for life, even though it was more easily dissolved than a marriage.[5] One of the best indications that the old conceptions were no longer prevalent was that "the binding nature of the betrothal and its importance as an impediment to marriage is now rarely taken advantage of by the injured person. In fact, it is not considered just for him to attempt to retain his betrothed with the aid of the law. In most cases he probably never knows that the law provides him with the means to do so. With the rise of a more deeply ethical conception, according to which marriage should first of all be built upon mutual love and sympathy, betrothal, as an impediment to a new marriage, has lost its foothold in public opinion."[6] This led the Commission to suggest that betrothals be entered into informally and as informally broken. "It should be enough that the betrothed agree to dissolve the betrothal or that one of them signifies his intention to withdraw his agreement."[7] The proposed wording of the law, "betrothal exists, when a man and a woman have agreed to marry", was attacked because of its "looseness" and was finally changed by the Riksdag to read, "Betrothal exists, when a man and a woman, by exchange of rings, in the presence of witnesses *or otherwise,*[8] have signified their intention to marry."[9] The significance of the changed wording is not quite clear to the writer, since the words "or otherwise" seem to nullify the expected improvement.

The incomplete marriage of the old civil code has received no place in the new law. These marriages were originally instituted to provide a place in the law for the old

[5] *Lagberedningens förslag, etc., I,* p. 107.
[6] *Ibid,* p. 108.
[7] *Ibid,* p. 109.
[8] My italics.
[9] See Appendix.

civil marriage and were to be confirmed by a religious ceremony. Now, their real purpose is to enable a woman, who has become pregnant, to gain restitution from her lover, in case he has deserted her. If such a situation exists, the new law tries to protect the woman by provisions built on the theory of financial responsibility. These provisions are probably more effective, since it gives the woman an opportunity to get damages should the man have no real property, a frequent occurrence during the regime of the old civil code, which resulted in the woman receiving nothing at all, since the law gave her a marital property right in his property, real and personal, while giving her no claim to his savings or his income. Therefore, if the woman becomes pregnant during the betrothal and the man later causes a dissolution of their relationship, she is entitled to financial compensation, unless the man is under eighteen years of age, when he is not liable. The court shall, in its deliberation, take into consideration not only the financial loss which the woman may have incurred by loss of position or a loss of health but also the spiritual loss, which she has suffered, and the humiliation to which she has been subjected. The law has found it impossible to maintain this point of view consistently, however. In case the betrothal is dissolved by the man's death, the law, for the protection of the mother-to-be, gives her, should she be in need, a right to a reasonable part of the man's estate, though not exceeding one-half of it.

If no cohabitation has taken place and the betrothal is broken, it is in accord with the spirit of the law that no compensation should be granted the injured person, unless the latter has already begun preparations in view of the impending marriage, in which case she may recover damages from the other, unless the latter was under age and entered the betrothal without his guardian's consent. The dissolution of the betrothal entitles each of the betrothed to the return of the gifts he has given the other in view of the marriage. The one, who has been the cause of the rupture, however, loses this privilege.

The idea that it would be possible for a man and a woman to enter a secret agreement to marry, an agreement which could be as easily broken as made and which had no serious legal consequences except in cases where conception had taken place, was repugnant to many members of the Rigs-

dag. Mr. Räv, in a speech in the Second Chamber informed his colleagues that, so far as he could see, the betrothal savoured more of a business transaction than of troth. "A man and a woman make a business agreement that they shall begin or end a marriage. There is no thought that troth, a good old Swedish virtue, should last a life time."[10]

Another subject for discussion was the proposed total abolition of the incomplete marriages, which institution was defended in the First Chamber by Prof. Steffen, the sociologist. Professor Steffen held that the law should give to betrothals the character of an incomplete marriage, in case the woman has become pregnant. "I believe," he said, "that a custom that will only gradually disappear among our people, will in such manner be given a legal protection, which will save it from sinking to a lower ethical level. We neither can nor should remove the preparatory agreements and relations, which result in marriage. But neither can we hinder that these betrothals and relations often, and among certain classes very often, become a kind of incomplete marriage, due to sexual relations and pregnancy, which follow the betrothal. Since real life is such, it is necessary that our laws should take it into consideration. What should this consideration include? It would, of course, include legislation which guarantees the maintenance of the woman's and the children's idealistic as well as social and economic position, in case the betrothal is complicated by physical union, pregnancy, and childbirth, and the man refuses to complete the marriage. It seems reasonable and in accord with a sound sense of honor that our laws should protect the woman against the social misfortune of bearing an illegitimate child and later force her to bring it up, alone and without the married woman's name.....Instead of this the proposed law gives her nothing but 'financial compensation'".[11] A similar opinion was voiced by Senator Stadener, who decried the fact that the old law provision had been left out which held that a betrothal existed as soon as the parties to it had asked for publication. Both he and Professor Thyrén pointed out that among the common people more than half of the

[10] *Andra Kammarens Protokoll, nr.* 71, 1915, p. 30.

[11] *Första Kammarens Protokoll, nr.* 64, 1915. The Law of Children Born out of Wedlock, passed in 1917, has removed, in part, Prof. Steffen's objections.

marriages are really begun immediately after the publication has been applied for and that such publication is still looked upon as binding the candidates in a union "which shall be completed by a ceremony."[12]

Disabilities

As to the impediments to marriage, the new law is in some respects more lenient, and in others harsher than the old code. Certain considerations alien to the people of an earlier age, have led to more stringent regulation of the age and health requirements of the candidates. The Commission was also guided in its deliberations by the fact that the marriage rate in Sweden is remarkably low[13] and that therefore the entrance into marriage should not be made unduly difficult. "Just as society sees in marriage the only desirable form of sexual relations, so is marriage something so valuable to the happiness and personal development of the individual that he should not be excluded from it except for the most serious reasons..... Various economic and social conditions constitute such great obstacles to marriage that the legislator should carefully weigh the advisability of adding legal disabilities to them."[14] The Commission also emphasized the necessity of considering the problems of public health. "By the race hygiene of today, eugenics, increasingly strong demands are made for legislation, which shall safeguard the future generations and improve the human race. This movement aims to fight not only those dangers to public health, which are created by phenomena such as emigration, industrialism, or the massing of people in great cities, but also the race poisons, such as syphilis, tuberculosis, and alcohol. It will, consequently, encourage society to conscious efforts to raise the marriage rate in its better qualified groups, while preventing the propagation of the unfit. The steps to be taken in the first case are primarily of economic nature and therefore outside the realm of family legislation, from which one demands that it should prevent the marriages of those who are, from a eugenic point of view, unfit and also provide means for the dissolution of such marriages."[15] To be able to act wisely in this matter and in accord with the above expressed conviction, the Com-

[12] *Ibid, nr.* 75, 1915, p. 31.
[13] See page 109.
[14] *Lagberedningens förslag, etc. I,* pp. 129-30.
[15] *Ibid,* p, 131.

mission asked the Medical Faculty of the University of Uppsala to give its opinion:

1—in regard to the advisability of retaining the stipulations with reference to marriageable age and relationship as impediments to marriage and, in regard to the former, if the law should be made to conform with the Danish and Norwegian law, which places the minimum age of marriage at sixteen for the woman and twenty for the man.

2—in regard to the advisability of considering, under certain conditions, epilepsy, leprosy, insanity, venereal disease, alcoholism, other illnesses, impotence and physical defects, as impediments to marriage or ground for annulment.

3—if, and to what extent, punishments should be prescribed for a spouse, who infects the other with venereal disease or exposes him to such infection.

4—if, and to what extent, legislative action should be taken to prevent the spread through marriage of "inheritable" or infectious diseases.[16]

On the basis that, in the question of marriages, the most desirable features, from a social and a medical point of view, are a normal marriage rate, a fertility which is sufficient and which results in the best possible type of offspring, the best possible conditions for the personal hygiene of the spouses in and through the marriage, their greatest possible happiness and satisfaction therein, and a satisfactory stability of the union, the Faculty answered the Commission that thorough research showed no real reason why the minimum marriage age for the woman should be raised. A lowering of the age in accordance with Danish and Norwegian law was, from a medical point of view, inadvicable, but there was no reason why Royal dispensation should not be given in special cases where the candidates had not reached the marriageable age. Even then, it would be wise to establish a certain minimum age, probably coinciding with the age of consent (fifteen for the woman and eighteen for the man) below which dispensation could not be given. An application for dispensation should also be accompanied by a medical certificate. There was no necessity for retaining a lower marriageable age for the Laplanders, since inquiry had shown that in 1900,

[16] *Ibid*, p. 524.

out of 6,983 Laplanders, no man and only one woman under twenty years of age was married.

In regard to the blood relationship, the Faculty was doubtful if marriages between uncle and niece, aunt and nephew should be permitted. Such unions should certainly not be entered into except by Royal permission and even then only when the application was substantiated by duly authorized testimony in regard to the good health and good constitutional heredity of the candidates.

As to epilepsy, the Faculty proposed that epilepsy, which is not due to exogenic causes, should be made an impediment, but that Royal dispensation should be available on petition, on the condition that such dispensation should grant marriage with a specific person and should be made only upon the basis of an authoritative medical certificate showing the petitioners' health and constitutional heredity. Possible relationship between them and the opinion of the Royal Medical Board must also be taken into consideration. Any one, who is or can with reason be suspected of suffering from some form of epilepsy should be denied the right to marry, unless he presents a medical certificate, approved by the Royal Medical Board, showing that he is free from such illness.

As to insanity and kindred psychical derangements, the Faculty suggested that existing insanity and feebleminded-ness, previous insanity due to endogenic causes, and psychic or moral defects of more serious nature, forming a particular danger for the spiritual development of the offspring, should form impediments to marriage. Dispensations should be granted only under conditions similar to this previously suggested in case of epilepsy. A person who has been insane or who for good reason could be suspected of being insane or feebleminded or psychically abnormal should not be allowed to marry without a medical certificate approved by the Royal Medical Board showing him to be free from the psychical abnormalities mentioned. The same procedure should be required in the case of persons, who have been sentenced for more serious crimes, criminal repeaters, or vagrants.

It was suggested that venereal disease in an infectious stage be made an impediment to marriage. As to alchoholism and leprosy no recommendation was made, neither did

the Faculty wish to propose that physical defects, such as deafmutism, etc., be made impediments.

In answer to the question regarding punishment for a spouse, who has exposed his mate to infection from venereal disease, the suggestion was made that it would be more advisable to pass positive legislation providing for isolation and hospital care for diseased people. No legislative action for the prevention of the spread of inheritable defects was advised except that all candidates for marriage, who were suspected of suffering from such defects should be required to bring medical certificates of their fitness.[17]

After due consideration of this expert opinion, the Commission drafted the chapter dealing with the impediments. The marriageable age of the woman has been raised to eighteen, while that of the man remains at twenty-one. No change has been made in the King's power of granting dispensations in case of candidates below the above ages. Since there is nothing to indicate that the Laplanders need to be treated differently from the rest of the inhabitants, the old civil code stipulation in favor of a lower marriageable age for them has been abolished.

All persons intending to marry before reaching the age of 21 must have their parents' or guardians' consent. This also applies to persons who have been placed under guardian, after reaching the age of majority. The rule is nullified only in case of those who have already been married. The old sequence of guardianship[18] has disappeared and unless one parent is absent or incapacitated, the consent of both parents is necessary. In requiring the consent of both parents and in placing the man under the marriageable age on a par with the woman, the law departs from the old civil code. The refusal of consent must be based on sufficient cause, or the court might be appealed to for aid.

In accordance with the recommendation made by the medical experts, "epilepsy, which is mainly due to internal causes" has been retained as an impediment to marriage, and to this insanity and feeblemindedness have been added, which, although not mentioned as impediments in the old code, can be said to have served as such since feeblemindedness in most

[17] *Ibid*, pp. 532-552.
[18] See page 18, note.

cases and insanity in practically all cases precluded the power of making valid contracts. Venereal disease in an infectious stage is the most important addition to the legal impediments, all of which, with the exception of feeblemindedness and insanity, which are absolute, can be set aside by Royal dispensation, granted on the merits of the individual case.

Important modifications have been made in respect to the impediments arising out of blood relationship. In line with former legislation, marriage between persons in directly ascending or descending line has been prohibited and so has marriage between brother and sister. Marriage between uncle and niece and aunt and nephew are now possible in special cases, if Royal permission has been granted; the old code forbade these marriages. On the other hand, marriage is prohibited between persons, one of whom has been married to the other's relative in directly ascending or descending line, a prohibition which was seriously questioned on the floor of the Riksdag, and which should not have been made absolute. The law has abolished the old affinity rule, which placed a relationship based on cohabitation alone on a par with that of a marriage, as far as impediments were concerned. The old "confusio graduum" has disappeared. The law also forbids the marriage of a parent and an adopted child so long as the adoptive relationship exists.

An explicit prohibition against bigamy is found in the new law. It is to be remembered that, although the criminal law provided punishment for bigamy, no former law actually prohibited it.

For the purpose of establishing paternity, no woman is permitted to enter a new marriage until ten months have passed since the dissolution of the former marriage. If she can prove, however, that no marital relations have existed between her and her husband for ten months previous to the new marriage, this prohibition shall be set aside. The mourning period, both for widow and widower, has been abolished.

The incomplete marriage of the old code no longer forms a bar to marriage; it has been abolished. The former impediment arising out of the fact that a person who desired to enter a new marriage had failed to divide the property of the deceased spouse, has received no place in the law. Neither does adultery any longer bar a person from marrying the one with whom the adulterous relationship existed.

A temporary impediment exists for the person, who, after the reading of the transcript notice or the publication of banns, fails to complete the intended marriage. For him a period of four months must elapse before another transcript is issued, unless his jilted betrothed dies. This, however, cannot be said to be an impediment in the usual sense.

Publication of banns.

As a means of discovering the existence of impediments, the publication of banns serves a useful purpose. It has been pointed out, however, that it was usually in cases, where the applicant was bound by an earlier betrothal, by an incomplete marriage, or by the failure to settle his estate, that the pastor was informed of the existence of a disability. Since all these impediments have been left out of the new law, the question has naturally been raised, whether or not the publication can be expected to be effective. It has been retained in the hope that a public announcement of an impending marriage may deter those from applying for publication, who shrink from publicity because they know that people are familar with their disabilities. It is also hoped that such an announcement will actually prompt persons to inform the minister of existing impediments. Last of all, but not least important, it makes a hasty marriage impossible.

It is quite natural that, although the publication now serves a civil and no longer an ecclesiastical purpose, it should be in the hands of the clergy, which have for centuries, through the parish record, been the registrars of vital statistics, a function delegated to them by the state. Since the state, as a result, lacks the facilities which would make possible effective statistical work in this field, the clergy, in their capacity of parish registrars, have become the publishers of the banns of marriage, a situation which may change at any time should the state decide to make provisions for civil registries.

Publication shall take place in the parish, where the woman is registered or where she resides, in case she should not be registered there. Both betrothed must, in person, make application for publication to the minister in charge of the registry. Before issuing the publication notice he must make a careful investigation for the purpose of ascertaining, if there is any possible impediment to the union.

If the man is registered in some other parish, he must

bring a transcript of the record of his parish, issued by the proper registrar and showing his qualifications for the marriage.[19] This transcript, which cannot be issued until the consent of the woman has been obtained, specifies by name the woman he is to marry and gives information regarding existing impediments of relationship, etc. It serves as an aid to the minister who must investigate the application and is not meant as a substitute for this investigation. Usually the applicant's age is given in the transcript but should it be lacking, he must present other evidence in this respect, and if either petitioner is under age, the King's permission must also be presented, as well as that of parents or guardians, should their consent be necessary.

Each applicant for publication of banns must present an affidavit that he is not, so far as he knows, suffering from venereal disease in an infectious stage;[20] that he is not related to his betrothed, directly or by marriage, as stated in chapter 2, Paragraphs 2 or 9; and that no relationship, as stated in paragraph 8 of the chapter mentioned, exists between them. The affidavit must also contain information whether or not he has been previously married. If the registrar has reason to suspect that the applicant is feebleminded or insane or has been insane within the preceding three years, he shall demand a medical certificate showing that the applicant is free from the affections mentioned. A similar certificate of freedom from idiopathic epilepsy must also be presented, should the registrar suspect that the applicant is epileptic. In case the applicant has been previously married, he must present proof that the marriage is dissolved,

[19]A foreigner must, if possible, present a corresponding certificate from his home parish.

[20]In December, 1915, the following Royal decree was issued: If a physician has treated any one for venereal disease and said person shows symptoms that the disease is infectious or that infectiousness is likely to appear, he shall, whether or not he is still in the service, if the patient is likely to marry, privately and in a suitable manner inform him of the legal prohibition against his marrying without the King's permission. If he discovers that the patient intends to marry without such permission, he shall, without being hindered by paragraph 60 in the instructions for physicians of Dec. 30, 1911, immediately, and in writing, inform the pastor of the parish where the patient is registered. The pastor shall, in case the transcript is or will be issued, immediately transmit the information to the authority with whom information in regard to disabilities should be lodged. *Svensk Författningssamling*, 1915, nr. 485.

should the parish record or the transcript lack this information; or, in the case of the woman, that the impediment referred to in chapter 2, section 11, does not exist. In all cases, where Royal dispensation has been obtained, the necessity of obtaining proofs or affidavits is obviated.

As soon as the minister has made certain that so far as his investigation can reveal, no impediment to the marriage exists, he shall immediately issue a notice of publication, which is to be read from the pulpit of the parish church three Sundays in succession; the first reading to be made the Sunday following the week, during which the publication was applied for. The notice shall contain the names, the addresses, and the occupations of the candidates. Should the man happen to be registered in another parish, the minister of his parish shall read a notice from his pulpit the Sunday following the week during which he applied for a transcript of the the parish record. This notice, in addition to the information found in the publication notice, shall also state the place where information regarding impediments to the marriage can be lodged, thereby making it more assured that a marriage does not occur in the face of disabilities. Any information of this nature, which may reach the proper minister shall be tested by him before any decision is made. Should he refuse to issue the notice of publication, his decision may be appealed to the cathedral chapter and, in case the chapter upholds him, to the Supreme Court.

If the publication has been completed and no impediments have come to the minister's notice, he shall issue a certificate of publication, which states that publication has taken place in due order and that no impediments have been found to exist. Upon the basis of this certificate, the civil or religious ceremony can be performed .

There are times when the inflexibility of the law might do much harm; consequently, there have been special concessions made in certain cases. If a betrothed is dangerously ill or if the man has been called to arms against the enemy, publication may be dispensed with. Even in these cases, the requirements as to impediments must be filled.

The only provision which was attacked by members of the Riksdag, was the one requiring affidavits of both the man and the woman, or as the law literally reads, "written statements made on honor and conscience," that they do not

suffer from venereal disease in an infectious stage. Senator Trygger felt that to vote for this provision would be "the most revolting thing he had faced during his entire parliamentary career.[21] Senator av Ekenstam expressed as his opinion that he "considered as most revolting a requirement that forced young girls to make such declarations". "I do not believe", he said, "that the Swedish people has fallen so low nor that our women have so lost their virtue that they need to make such declarations. This conviction is not subjective only, but can be supported by statistics.....I shall only say that, if Stockholm and Gothenburg be excepted, the percentage of venereally diseased women is so small that if we, because of the one hundredth part of one percent that are found in the rest of the country, should demand of *all* girls such declarations it would be a *sacrilege*. I do not believe that the people would thank our legislators for such an action. They would undoubtedly, like myself, feel that such a position would be materialistic. All the delicate sense of tact, which should appear in this matter, has flown and, instead, one thinks as a physician does of his patients, giving no consideration to what is moving in the realm of the spiritual life."[22] The Commission was, of course, fully aware of the fact that there might be some indignation felt in individual cases but hoped that as the custom grew of instructing the youth of the country in sexual hygiene, the objections would disappear. In spite of the gallant champions which the women of Sweden had in the Senate, many of these women welcomed the provision because of its importance for public health and opposed its abolition, so far as they were concerned, because it would simply emphasize the double standard. Senator von Koch, in a short speech, took the occasion to read the following letter written to the legislative committee by a group of representative women. "We concur in the suggestion of the Royal Proposition in regard to the duty of the woman, as well as of the man, to present, at the time the publication of banns is asked, a written declaration, on honor and conscience, that she does not suffer from venereal disease in an infectious stage. We can, therefore, not support Senator Ekman's opinion, expressed in his bill, nr. 68, F. K.

[21] *Första Kammarens Protokoll, nr.* 64, 1915, p. 39.
[22] *Ibid*, p. 35.

that such a declaration contains anything insulting to the woman. It should be assumed that a woman who enters marriage is sufficiently mature to realize that this provision has been made in the interest of society."[23]

The cathedral chapters, which had been asked for opinion on this point, were divided on the question, although the majority left the paragraph without criticism. Those that found fault with it did so not because of the spirit of the law but because of its wording. The Cathedral Chapter of Västerås wrote, "The proposed declaration by the applicant for publication of banns regarding freedom from venereal disease in an infectious stage, might of course, cause some difficulties, but when the desirability of such a declaration is so forcefully championed in medical circles and without doubt would aid in combatting a social evil, the Chapter does not deem it wise to suggest its abolition, hoping that a wording shall be found, which in a fine and tactful manner can remove the most objectionable features in this delicate matter."[24]

The Ceremony

In its provisions regarding the marriage ceremony, the new law follows the law of 1908 quite closely. It consequently rests on the elective principle, the principle of freedom of choice between the religious and the civil ceremony. It differs somewhat from the law of 1908[25] in that the right to a religious ceremony has been extended, the civil celebrants have been increased in number, and a definite statement has been made as to what constitutes the necessary elements of the ceremony and what the effects on the validity of the marriage are, should any of these elements be dispensed with.

The law of 1908 reserved the religious ceremony to members of the State Church, who had partaken of its sacraments, or who had received religious instruction by a minister of that Church and by him found prepared to receive the sacrament upon confirmation; and to betrothed, who were members of the same alien faith, the ministers of which were by Royal permission authorized to celebrate marriages. The privilege of a religious ceremony is now extended to mixed marriages, where the betrothed are members of different

[23] *Ibid*, p. 39.
[24] Quoted in *Lagutskottets utlåtande nr.* 32, 1915, pp. 23-24.
[25] See page 28.

denominations. In this respect the law has reverted to the position held before 1908. Within the State Church a ceremony between a member of that Church and one belonging to some other Christian faith can now be celebrated. Ministers of alien denominations with celebration rights can unite in marriage their own parishioners or, if the denomination is Christian, a parishioner and a member of some other Christian denomination. It is to be observed that all the prerequisites, such as preparation for the sacrament, etc., are removed for members of the State Church. The Royal Proposition contained a suggestion that no unbaptized Lutheran should, for the purpose of marriage be regarded as a member of the State Church, but this provision was not embodied in the law, because of opposition by the clergy, who felt that it would seem peculiar, if an unbaptized member of an alien denomination could enjoy a religious ceremony while a member of the State Church could be excluded from that privilege. A second reason was the difficulty of ascertaining, in some cases, who have been baptized within the Church, and a third reason "that....as many as possible should be given the opportunity to have a religious ceremony performed and thereby come into contact with the Church during a most serious occasion in their lives."[26]

The law, furthermore, gives to the King the right to extend to members of Lutheran Churches of other countries the privilege of a religious ceremony performed by a minister of the State Church. As a result a proclamation was issued on December 3, 1915, giving this right to members of the Evangelical Lutheran Churches of Denmark, Norway, and Finland and to members of the Evangelical Lutheran Augustana Synod of North America.[27]

As celebrant of the religious ceremony within the State Church, the betrothed may choose any minister of that Church. Only ministers of their own parishes, however, are duty bound to accede to their request. Within other denominations the marriage must be celebrated by a duly authorized minister.

The civil ceremony is open to all, regardless of what right to a religious ceremony the candidates may have. The law has increased the number of the celebrants. In the towns,

[26]Bishop Bergquist in a speech in the Senate, May 8, 1915.
[27]*Svensk Författningssamling*, 1915, nr. 480.

the registered magistrates, or, where there are no magistrates, the president of the city council is authorized to perform the civil ceremony. In the country, the public prosecutor of the county remains as celebrant and in certain districts the Governor may appoint special functionaries. This provision was found necessary to meet conditions in some parts of the country, which, like Lappland, are sparsely populated, and where many people have dispensed with the legal ceremony because of the expense connected with the far journey to a magistrate. The special functionary mentioned is duty bound to perform a marriage regardless of the residence of the betrothed. Should a county prosecutor happen to reside in a town, he is also authorized to perform marriages there, although he is not required to do so unless one or both of the betrothed live in his district.

Whether a religious or a civil ceremony is chosen, the candidates must present the certificate of publication to the celebrant. Although the presumption exists that such a certificate means the absence of impediments to the marriage, the celebrant is nevertheless able to refuse to perform the ceremony should he know of some impediment. Only in case the celebrant is the minister, who issued the certificate in question, it is unnecessary to demand that the candidates present it. The life of the certificate is usually four months, but in the case of Laplanders, who are leading a nomadic life, a year may pass before the certificate becomes invalid. If either betrothed is dangerously ill or the man is ready to march against the enemy, a certificate of publication is unnecessary. Even in such cases, the betrothed must bring to the celebrant a transcript from the record of his parish and in addition meet all the prerequisites for the issuing of a notice of publication.

As for the form of the ceremony itself, the law states that it shall be performed in the presence of relatives or other witnesses. The essential elements of the act are the presence of both betrothed before the celebrant, their affirmative consent to the marriage in response to a question by him, and his declaration that they are husband and wife. In other respects the ceremony is guided by the ritual of the Church involved, or by the form proclaimed by the King for the use

health and opposed its abolition, so far they were concerned, in some cases, who has been baptized within the Church, and

of civil celebrants.[28] A marriage certificate is to be given the couple immediately after the marriage, and in case the civil ceremony has been used, a special report of the proceedings must be made.

The omission of any one of the necessary elements of the ceremony invalidates it; so does the fact that the celebrant is unauthorized to perform it. If the celebrant exceeds his authority and embellishes the ceremony or performs the marriage without the presence of the witnesses prescribed or without the publication being made, the marriage is not invalid. The celebrant, however, is liable to punishment on the grounds of malfeasance in office.

The clergy raised an objection to the terminology of the law, because the Law Commission had extended the term *"vigsel"*, formerly used only for the religious ceremony, to cover the civil ceremony as well, the latter being in former laws referred to as "marriage entered into before a civil authority." *"Vigsel"*, it was said, "is a word with sacred sanction; it implies a holy ceremony. To give legislative support to a wrong use of words in this manner would help to extinguish among our people the reverence for all that

[28]December 3, 1915, the following proclamation was issued:

"Sec. 1. When the civil ceremony is to be performed and the betrothed appear before him, the celebrant shall say to them:

The aim of marriage is the welfare of the individual and the maintenance of society. You have signified your desire to enter matrimony. Do you, N. N., take N. N. to your wife for better or for worse? Answer: Yes. Do you N. N. take N. N. to your husband for better or for worse? Answer: Yes. Take each other's hands in confirmation. (Before shaking hands, the man can put the ring on the woman's left hand). Empowered by my office, I declare you husband and wife. Never forget the promise of life-long faith, which you have now made. Live together in mutual love, confidence, and respect, and consider your responsibility to future generations. May happiness and unity be yours and bless your home.

"Sec. 2. What has occurred at the ceremony, the celebrant shall immediately write into a special ledger, giving among other things, the time and place of the ceremony and the full names, addresses, and occupations of the betrothed.

A notation shall be made in the margin showing that the celebrant has sent a notice of the marriage to the proper parish registry.

"Sec. 3. The special celebrant, appointed by the Governor in accordance with chapter 4, sec. 5 of the Marriage Act, shall before the expirations of the month of January send the Governor a transcript of the contents of the ledger for the year preceding. This transcript shall be kept by the Governor, and, if he should withdraw the appointment, the ledger shall be returned to him." *Svensk Författningssamling*, nr. 481, 1915.

which really has religious sanction."[29] It was suggested that the civil ceremony be distinguished by a word of less importance, a suggestion which the Commission had anticipated and which it met in the following words: "Until now the word 'vigsel' has in legal terminology been reserved for the religious ceremony.....In daily usage, however, the term has for some time been applied to the civil ceremony as well, and now this usage seems to be quite well established. Since this is the case, the Commission has not hesitated to use the term 'vigsel' to include both forms. Such a change is useful also in the sense that it aids in removing a belief that a civil marriage is of lower value than one entered into by the aid of the Church, a conception which it should be to the interest of the legislator to combat."[30]

It was also proposed that the Riksdag exclude from the law all provisions belonging to the realm of Ecclesiastical Law, since it is the business of the Synodical Congress to pass such legislation. It was urged that something should be done to enable ministers to refuse to officiate, when one or both of the candidates had been divorced, since the marriage of divorced persons is repugnant and not in accord with orthodox religious teachings. The various objections made were embodied in resolutions, which were sent to the Synodical Congress of 1915 together with a Royal letter asking that the Congress pass upon the parts of the Law dealing with the religious ceremony within the State Church, punishment of ministers within that Church for failure to perform their duty, and certain parts of the promulgation act.[31] After serious consideration, the Legislative Committee gave its opinion that "the term 'vigsel' to designate a civil ceremony was out of place and without historical and ethymological basis," but that it was "already commonly used for the civil ceremony and had, besides, been given legal sanction by the new law passed by the Riksdag."[32] "Without denying the weight of the reasons advanced against a religious ceremony for divorced persons, the Committee must, nevertheless,

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[29]From motion in the Senate by K. J. Ekman. See *Lagutskottets utlåtande, nr.* 32, 1915, p. 30.

[30]*Lagberedningens förslag etc. I,* p. 282.

[31]The law had already been passed by the Riksdag, when this communication was sent.

[32]*Kyrkolagutskottets betänkande nr.* 19, 1915, p. 9.

point out that (such) prohibition would also affect the spouse who is innocent and not responsible for the divorce.... And since existing legislation places just about the same duties upon a minister to marry divorced persons as those imposed on him by the new law, the Committee cannot see any reason for suggesting such a change."[33] The Committee also proposed to the Congress that it adopt for incorporation into the Ecclesiastical Law the paragraphs, which the government had sent for approval, a suggestion which was promptly followed.

[33] *Ibid*, p. 10.

CHAPTER FIVE

THE DISSOLUTION OF THE MARRIAGE

Annulment

The preceding chapter has pointed out that formal defects in the marriage ceremony result in the invalidity of the marriage. The subject of this chapter is the dissolution of the marriage bond by annulment, separation, or divorce. It is particularly proper that the matter of annulment be discussed in connection with the other forms of dissolution, since the new law has given it a status, which in many respects differs from the usual one.

In the old civil code, the stipulations regarding annulment were scattered throughout the law and carried no special designation. In its motivation, the Law Commission states that "the legal consequences [of an annulled marriage] depend on whether the marriage shall be theoretically regarded as void *ab initio* or the legal effects of the annulment shall date only from the time of the annulment." Formerly an annulment was retroactive and attempted to undo the marriage. This, however theoretically advisable, has serious practical difficulties. "Since a formally valid marriage has been entered into and the candidates have been regarded as husband and wife for a period of time....it would lead to rather unfair consequences if, when the marriage is annulled, the law would fail to consider that a marriage has existed, particularly since it is a question of both economic and spiritual interests. The demands of justice and humanity would undoubtedly be better satisfied, if the conditions, such as they have developed during the marriage, were disturbed as little as possible by the annulment. Only thus will the law adjust itself to the demands of real life."[1] The point of departure for the solution of the problem is not "to regard the annulment decree as an explanation that the legal basis of the marriage is inadequate and that consequently no legal relationship has arisen, but to take for granted that as soon as a formally corect ceremony has taken place a real mar-

[1] *Lagberedningens förslag, etc. I*, pp. 317-318.

riage exists and that an annulment dissolved it. Such an interpretation seems also to coincide with current legal conceptions. It is true, of course, that existing legal stipulations in regard to annulment give expression to the theory of nullity, which was formerly accepted in our country, but nowdays an annulment is usually looked upon as a form of dissolution of the marriage, similar to divorce."[2] No annulment decree shall therefore be retroactive. The reason for separating annulment and divorce at all, considering their similarity, seems to be partly due to tradition and partly a desire to conform to the legislation of foreign countries, a consideration of some importance since Sweden is one of the signatories to the Hague Convention of 1902.

The law recognizes two kinds of grounds for annulment, one of public and one of private nature. The former includes marriages, which are considered against public policy and which therefore must be dissolved, when the state, through its public prosecutors, has demanded the dissolution. Grounds of private nature can be used as a basis for action only by a spouse.

Marriage entered into, in spite of relationship of such a nature that the King would be unable to give permission to the union, must be annulled. Such marirages are; those between brother and sister, mother and son, father and daughter, etc. Bigamous relationships also are in this group. Bigamy, however, cannot be made a ground for action, if the earlier marriage has been dissolved.

Among the private grounds for annulment we find, first of all, insanity and feeblemindedness at the time of the marriage. In such cases, the afflicted person cannot be bound by his promise and, even though he should recover his health, he may petition for annulment within six months after his recovery, if he does not wish to forfeit his right. The same privilege is, of course, extended to the other spouse, if he, at the time of the ceremony, was ignorant of the former's condition. A marriage can also be annulled upon the petition of a spouse, if he, at the time of the ceremony, was temporarily out of his mind or in a condition which excludes the ability to make a legal contract, such as intoxication, etc.; if he, by mistake, married some other person than his be-

[2] *Ibid*, pp. 319-20.

trothed or did not wish to marry at all; if he, at the time of the ceremony, was ignorant of the fact that his betrothed was suffering from venereal disease in an infectious stage, leprosy, or idiopathic epilepsy, or was incurably disabled to perform the marital function; if he was deceived into the marriage by false statements or fraudulent concealment of the identity of his betrothed and such circumstances of his earlier life, which, if known, would have caused the dissolution of the betrothal; and finally, if he was forced into the marriage. The right to start action on these grounds is forfeited if not exercised within a certain time limit. On no condition can a petition be entertained, if made more than three years after the marriage, nor can it be made on the ground of illness, if the illness has been cured and if, as in the case of venereal disease, the petitioner has not been infected. Neither failure to reach the marriageable age, nor lack of guardian's consent, nor failure to observe the waiting period in the case of a widow or divorcee, nor failure to get the King's permission in cases of dispensable relationships, constitutes a ground for annulment.

"Due to the light in which the Commission has regarded marriages that are annulled, it is natural that, in formulating the rules of the legal effects of the annulment, the corresponding effects of divorce should be frequently referred to."[3] The law states that, in the main, the legal effects of divorce shall apply to annulments as well. The most important deviation from this principle has to do with the division of the property. It has been considered unjust to give a spouse marital property rights in property, which the other owned at the time of the marriage or which he has later acquired through inheritance, gift, or will. When the division of the estate is made after the annulment, all such property shall be regarded as the private property of that spouse. The duty of support, which husband and wife in some cases owe each other after a divorce, does not exist in annulment cases. If the husband, at the time of the marriage, acted in good faith, but not the wife, he can also have the court prohibit her using his name in the future, another point of difference. A similarity exists in that the children of an annulled marriages are legitimate. The rules for damages in case of an-

[3] *Ibid*, p. 321.

nulment also agree in principle with those governing damages in divorce proceedings and the law tries to regulate, in an equitable manner, the disposal of the family property, if a marriage, which should have been annulled, is dissolved by death.

Separation and Divorce.

In drafting the part of the law dealing with separation and divorce, the Commission probably met its most difficult task. The existing legislation was by no means adequate or in the spirit of the age. Malicious desertion, as a cause for divorce, had given rise to the so-called "short road" divorces, typified by trips to Copenhagen, which were available only to those who were financially fortunate and which violated the spirit, if not the letter, of the law. The "long road" had to be taken by the poorer classes and since it involved public warnings and other unpleasant features, it gradually came to be regarded as a procedure highly insulting to the petitioners. Again, the increasing number of divorces by administrative order made the problem of the children acute, since arrangements as to their care and the division of the property were impossible, when divorces were granted at long distance. The Commission also pointed out that "what the old code provides as to the loss of property rights [on the part of the guilty spouse]....is, in practice, very unfair because of the application the rule has received, particularly in the case of malicious desertion. Usually it is not applied at all; husband and wife make a private agreement in regard to the disposal of the property. Since, however, the law does not recognize as valid an agreement between husband and wife so long as the marriage exists, such an agreement must be clothed in other forms, which again necessitates the circumvention of the law. In many instances, however, it has been shown that such an agreement has been invalid, if after the divorce one of the spouses refused to abide by it."[4] The old code also failed to provide for the support of a divorced spouse, except in case of insanity, which meant that a wife, incapable of earning her own living, might find herself a pauper, when her husband gained his freedom, a condition, which often led the court to re-

[4] *Ibid*, p. 385.

fuse divorce on the ground of "hatred and bitterness", even though the ground had been fully established.[5]

The family, the most important of our social institutions, must be founded on a deep and lasting love and sympathy. While this spiritual foundation exists, the union is ethically and morally justified. Should the foundation crumble, the marriage is no longer a true marriage and is, so far as society is concerned, much better dissolved. "With the present day ethical conception of marriage as a union, which should be built on mutual sympathy, love and confidence.....it would not be in the interest of public welfare to try to maintain a morally unjustifiable marriage, neither would this result in any gain for the spouses themselves or their children."[6] It is this conception, expressed in the first paragraph of the chapter on divorce, which was assailed by critics in and out of the Riksdag. To them, a marriage which could be severed by mutual agreement of "husband and wife, who on account of deep and constant discord are unable to live together," was "a mere contract law" and an "expression of materialism." To the Cathedral Chapter of Uppsala, the law upheld "an unworthy conception of marriage."[7] On the other hand, warm supporters saw in it the harbinger of a new morality. In the Second Chamber, the Reverend Hallén spoke in favor of the law, saying that "in making it easier to dissolve marriages, the great ethical result [of the law] is a reduction in the number of the marriages that are, in an ethical sense, immoral, because.....if personal love is not the binding tie in the union of husband and wife, their marriage becomes a lie, a condition, which our existing law does not remedy..... We must, indeed, admit that instead of being retrogressive, the law is the very opposite, since it is, in the realm of family legislation, trying to formulate those principles of justice by which children are protected and those marriages broken, which are actually nothing but legalized falsehoods."[8]

Mutual agreement, then, makes it possible for husband and wife to secure a divorce, if they, "on account of deep and

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[5] *Ibid.*

[6] Opinion of Lord Justice Thomasson and Lord Justice Baron Leijonhufvud. See *Kungl. Maj:ts Proposition nr.* 18, 1915, p. 80.

[7] *Lagutskottets utlåtande, nr.* 32, 1915, p. 47.

[8] *Andra Kammarens Protokoll, nr.* 71, 1915, pp. 32-34.

constant discord," have found their marriage to be a failure. If such an agreement exists, the court has no right to inquire into the nature of the "discord", which brought the marriage to such an unhappy end. "No one knows the conditions better than the spouses themselves. If they have found the marriage unendurable, there is a strong presumption that such a condition really exists."[9] In order, however, to guard against hasty and maybe unfounded decisions and "to secure a guarantee that a divorce is not applied for until the husband and wife have, upon serious and mature thought, found it impossible to continue their marriage,"[10] an absolute divorce is not given at once, the law establishing a waiting period of one year, or as the law terms it, a separation, which is very much akin to the old form of separation from bed and board. To maintain the marital relationships during the waiting period would make it difficult to reach a dispassionate and fair decision and the law, consequently, asks the husband and wife to live apart. One of them must leave home and the court usually permits the one to stay who has been less culpable or whose absence would mean the greater loss to the children. If it is necessary for the protection of the rights of those involved, the court may also, upon pain of imprisonment or a fine, forbid any communication between the two for the period mentioned. The real purpose of the waiting period, which exists only for marriages, which are in the danger of dissolution due to internal dissension and for no other reason, is to make the conditions for a reconciliation as favorable as possible. Both husband and wife must during this period make earnest attempts to adjust their difficulties. They are in duty bound to ask their pastor or some other person, appointed by the court on their petition or appointed by the community as mediator in all separation cases, to help them in this matter. Should, however, all earnest attempts fail and no reconciliation be possible, the court will, at the expiration of the year, make the separation decree absolute upon the petition of either spouse. There is no publicity. Even the court proceedings will be held behind closed doors, should one or both the petitioners ask it.

Separation can also be won by either spouse, upon his

[9] *Lagberedningens förslag, etc. I*, p. 390.
[10] *Ibid.*, p. 391.

petition, if the other is guilty of flagrant neglect in his duty to support the family, if he misuses intoxicants or leads a vicious life. Mediation must be tried in all such cases as well. Should the court find that the petitioner's private life and conduct is reproachable, it might refuse to grant the petition in order to inquire further into the case. The findings of the inquiry might lead the court to refuse the petition entirely, unless the marriage is unjustifiable from an ethical point of view and neither children nor wife would gain from its continuance.

The law recognizes that marriages, which are so only in name, because husband and wife have lived apart for three years or more due to "deep and constant discord", should be dissolved if either spouse petitions for it. The same is true when one spouse has, of his free will and for no valid reason, withdrawn from the marriage for a period of two or more years; the other has then sufficient grounds for divorce. An absence of three years upon the part of one spouse without any information of his whereabouts, gives the other a right to divorce. If a person remarries, in spite of the fact that the former marriage has not been dissolved, the spouse of this earlier marriage has a ground for divorce. The law retains adultery as a ground for action and adds to it all other punishable fornication.

If a spouse has exposed the other to infection from venereal disease unknown to the latter, a ground for divorce exists, should the latter wish to avail himself of it. Assault, plots against the life of a spouse, a three-year sentence to hard labor, or a shorter sentence at the discretion of the court; misuse of intoxicants in special cases; and incurable insanity, which has lasted continuously for a period of three years, are all grounds for divorce. The law no longer provides for divorce by Royal dispensation; all cases must be handled by the court. The petition must be made within a stipulated time to be effective. In cases where the guilty spouse remarries, commits adultery, or other punishable fornication, exposes the other to venereal disease, plots against his life, or assaults him, or is sent to prison for some serious offense, the petition must be made within six months from the time when the cause for action arose, and not later than three years from that time, unless the ground be that

of bigamy, or exposure to venereal disease, when no time limit is set.

The divorce has far reaching legal consequences. It affects the property of the family, may force one of the parties to support the other, and makes necessary a rearrangement of the provisions begun for the care of the children. When separation has been decreed, a division of the property shall take place, with the usual legal effect. Any property acquired after the division shall be the private property of the one who acquired it. Until the division takes place each spouse may continue to control his marital property, but when the time for the division comes he is duty bound to give an accounting of his administration and of all the income which has accrued from such property. Should either spouse have reason to fear that the marital property (in all of which he has half interest) might suffer at the hands of the other, he may ask the court to withdraw his share from the other's marital property and place it under a special administrator until the division is made. This the court can do unless the other places security for the property, the withdrawal of which has been asked, thereby guaranteeing it against loss. Of course, if a prenuptial agreement as to the disposal of the property already exists between husband and wife or if separation of property has already been decreed before the divorce, no such measures are in order. Before a division is made, a careful inventory of all the property must be made and a copy of it deposited with the court.

In some cases, the injured spouse may claim damages. If, for instance, a divorce is granted on the ground of non-support, drunkenness, or vicious living, and the petitioner's marital property is slight, he may, at the time of the division of the estate, claim necessary household goods, his tools and other chattels needed in the pursuit of his trade. This he can do, even though the other's share might suffer a depletion by the removal. If a spouse is granted a divorce on some ground which involves a serious wrong to him, or if separation has been granted him on the ground that the other seriously failed in his duties toward him, the petitioner is also entitled to damages, which vary with the financial and other circumstances of the family.

Even though separation or divorce has been decreed, the duty of a spouse to support the other has not been removed.

The old law recognized this duty only in one case, that of insanity. The new law extends this duty to cover all grounds, providing, of course, for some exceptions in individual cases. If separation has been won, a spouse shall, nevertheless, contribute to the other's support, in accordance with the economic and social status of the family *unless* the latter was the cause of the separation, in which case the court will take the matter under special consideration and decide on the merits of the case. The same holds true in case of divorce. After the court has settled the amount, which should be contributed, it still has the right to make changes in the amount at all times should circumstances make it advisable. It cannot make such changes if the alimony has been paid in a lump sum, once for all. The law recognizes as valid, agreements dealing with the disposal of the property, damages, and alimony, entered into between husband and wife in view of the impending divorce or separation. If later conditions cause these agreements to become unjust or prejudicial to either spouse, the court may upon his petition make an adjustment.

What happens to the children? The law instructs the court to arrange for their care, guided by what is considered best for them. There is no set rule made for their disposal. If husband and wife have agreed between themselves what should be done with them, the court shall abide by this agreement unless the children's welfare would be endangered by the court's passivity. The law holds that the question of guilt should never enter into the consideration unless both parents are equally able to care for the children, in which case they should be awarded to the one who did not cause the disruption of the family in preference to the other parent. The latter would even then be in duty bound to contribute to the support of the children. The law places no obstacles in his way of visiting them, unless the visits would be detrimental to their welfare. Whichever parent is awarded the children becomes their guardian, a right which during the marriage belongs to the father and mother in common.

In short, the new law has on the whole materially facilitated the gaining of divorce. By making separation by mutual consent possible, the rich and the poor are given the same opportunities for ending unhappy marriages. In fact, by requiring a separation of one year in all cases, where

"deep and constant discord" has disrupted the family, the easy divorce on the *technical* ground of malicious desertion and the *actual* ground of mutual consent, has been abolished. The new law extends a greater protection to the weaker members of the family, the wife and the children, and has, by its direct and implied emphasis on the spiritual significance of marriage, earned a high place in the annals of modern family legislation. It is true that the law leans toward the conception of marriage as an institution, which has developed out of human needs and which is not based on divine sanction. The ecclesiastical points of view have received no particular consideration, a fact which has been responsible for most of the criticism from that quarter. Many members of the clergy, however, saw beyond their creed in the discussion of the law. In Svensk Tidskrift, Rev. S. A. Fries wrote in 1913, shortly after the appearance of the Commission's report, "I can not see that the work of the Church, in an evangelical sense, has been, in the least, curtailed by the proposed law, which, time and again, characterizes marriage as a moral institution and not merely a legal one.....When a balance is made of public opinion of the ethical position of the proposed law, I believe that a fair estimate of the law, from ecclesiastical quarters, will find in it an ethical point of view, sufficiently strong to satisfy an evangelical conception of the moral meaning of marriage."[11] To make divorce easy is not immoral, but to permit people to marry, when they are physically or mentally unfit or unprepared to enter a relationship which is of greater importance than any other to the welfare of the group—that is immoral. A law which forces people to live in a marriage although the foundation of the marriage has crumbled, no longer "serves public welfare, and should be speedily abolished." Professor Edward Westermarck, the greatest living student of the family as a social institution, says, "It is a widespread idea that divorce is the enemy of marriage and, if made too easy, might prove destructive to the very institution of the family. This view I cannot share. I look upon divorce as the necessary remedy for a misfortune and as a means of preserving the dignity of marriage by putting an end to unions, which are a disgrace to its name. The

[11]Quoted by Count Hamilton in a speech in the Senate. See *Första Kammarens Protokoll, nr.* 63, 1915, p. 43.

existence of marriage does not depend on laws. If.....marriage is not an artificial creation but an institution based on deep-rooted sentiments, conjugal and parental, it will last as long as these sentiments last. And should they ever cease to exist, no laws in the world could save marriage from destruction."[12]

The Effects of the Law.

What effect has the marriage and divorce law had upon family life? It is, as yet, too early to make any good observations. It is apparent, however, that the expectation of a higher divorce rate as been fulfilled. Due to obvious causes, such as the institution of the one year waiting period, etc., there was a decrease in the number of divorces during 1916, the year the law went into effect. In 1917 there was a decided increase. While the number of divorces granted in 1915 was 847 and in 1916, 772, it jumped to 1,040 in 1917 and 1,045 the following year. In 1919, 1,170 divorces were decreed and in 1920 the climax was reached, the number being 1,310. In percentages of the total number of marriages, the rate was for these years: 2.55, 2.20, 2.93, 2.71, 2.90, and 3.06. It remained well below one percent until the decade 1890-1900, when it reached 1.15, from which time a steady rise has been recorded.

During the entire period 1917-20, there were 4,563 divorces granted. Out of these, 2,195, or 48.1 percent, were decreed after one year's separation on the ground of deep and constant discord or on the ground of mutual consent; 1,134, or 24.8 percent, were granted on the ground of actual separation for a period of three years due to dissension in the family; 360, or 7.8 percent, on the ground that one spouse had wilfully withdrawn from the relationship for a period of two years; 279, or 6 percent, on grounds, provided by the old law; 217, or 4.7 percent, on the grounds of bigamy or adultery; 160, or 3.5 percent, on the ground of a three-year disappearance; 131, or 2.8 percent, on the ground of insanity. The rest, 87 in number, were granted on the grounds of a penitentiary sentence, abuse of intoxicants, or venereal diseases, plots against the other's life, or physical maltreatment, the last mentioned group figuring in only ten cases.

[12]Westermarck, Edward, *The History of Human Marriage*, vol. 3, pp. 377-78.

In over eighty percent of the divorces, mutual consent, or dissension in the family, which had resulted in the actual dissolution of family life, were the grounds of complaint.[13] It may be instructive to compare these figures with those for the decade 1901-1910, when 4,735 divorces were granted. Wilful desertion formed the ground for complaint in 2,224, or 47 percent of the cases. In 1,722 cases, 36.3 percent of the total, the divorce was decreed on the grounds of wastefulness, drunkenness, violent temper, or difference in opinions and temperament; in 481, or 10 percent, on the grounds of adultery, in 155, or 3.3 percent, on the ground of crime; in 132, or 2.8 percent, on the ground of insanity. Of the remaining 21 divorces, thirteen were granted on the ground of incurable diseases, six because the wife, before the marriage, had had sex relations with some one else than the husband, one on the ground of life imprisonment, and one because of plots against the petitioner's life.[14]

[13] *Statistisk Årsbok för Sverige*, 1920, Tables 34-35, in page proof.
[14] *Lagberedningens förslag, etc., I*, p. 611, Bilaga 6.

CHAPTER SIX

THE LEGAL STATUS OF THE WIFE

The second part of the new law, dealing with the economic relationships in the family, was not ready for presentation to the King until August 31, 1918. It was prepared by the Commission, cooperating with the Norwegian and Danish Commissions, and was characterized by the same broad outlook, which featured the law of 1915. To represent the Swedish women, Fru Emilia Broomé, a leader in the work for the greater independence of woman, was appointed to the Commission, which otherwise consisted of Messrs. Ekeberg, Westring, Tiselius, and Stenbeck. Several communications from the Riksdag to the government and many appeals from various women's organizations throughout the country formed a basis for the work, because they expressed not alone a wish for improvement but specified the changes desired. In the most important points, the laws of the three countries were given a similar structure. The emphasis of the Norwegian law, however, was upon the economic effects of marriage, while the Swedish and the Danish law included other effects as well. Some minor changes were necessary in the law of 1915, and after these changes had been suggested, the entire law of 1915 was included in a Royal Proposition to the Riksdag of 1920, the main feature of which was the law proposed by the Commission in its report of 1918. The law was adopted without much change, was promulgated June 11, 1920, and went into effect January 1, 1921. Laws embodying changes in the Inheritance Law, the Bankruptcy Law, etc., and a Law regarding Children in the Marriage were passed at the same time.

It was a great victory for all those who had for years hoped and worked for the removal of some of the antiquities in the old code. The dynamic ideals of a progressive age had gradually caused the disintegration of the old philosophy of marriage, according to which the wife was to be silent in the public places and obey her husband at home. The women

of Sweden, or rather the representatives of the class-conscious women of Sweden, the Fredrika Bremer Society, the National Association of Swedish Women, the National Association for the Woman's Franchise, and the Executive Committee of the Social Democratic Women, in 1916 formulated the demands of the modern woman, whose desires were:

"1. The guardianship by the man should be completely abolished so that the married woman can get full legal power to act.

2. The changing conditions of life demand that the law should formulate and propose diverse systems of economic rights, based on private or joint property rights, and give husband and wife power to choose between these systems before the marriage and change from one to the other after the marriage, should they desire to do so.

Where community of property exists, the economic independence of the wife must be secured.....The chief principle should place husband and wife on the basis of equality in the matter of administrative control, whether this be jointly or separately exercised. The law should therefore formulate several systems of joint ownership of property.

According to their finances, both husband and wife should be duty bound to contribute to the maintenance of the family, the security of the home, and the education of the children, as well as to each other's personal expenses. If the wife has no separate income from her own labor or her property, her duty as contributor is filled by her labor in the home. Legal and effective means of securing the contributions mentioned should be provided.

3. The parental authority should be shared by father and mother equally. In case of dissension, the welfare of the children should receive the first consideration.

4. Disagreements between husband and wife should be referred to some authority, which should consist of both men and women.

5. A woman, who marries an alien, should retain her own citizenship as long as she lives in her native country."[1]

Almost all the demands made in the above communication were put into legal form by the Commission. In fact, the law gave in some instances more than was asked. It was

[1] *Lagberedningens förslag etc., IV*, p. 155.

only the demand for citizenship, which was left unconsidered, not because the Commission was not favorably inclined, but because it did not consider such legislation within its scope. It is a far cry, indeed, from the marriage ritual of 1811, which, only slightly changed since the 17th century, read in part. "You shall carefully consider that God Himself instituted marriage and made the man the woman's protector that he should be her protector and rule over her in the ear of God and to her benefit.....And as the man is by nature stronger and blessed with greater intelligence than the woman, he shall use these gifts for her protection and not for her subjection... The woman shall also obey the man, love him, and look up to him as her head, remembering that she was created to aid him. She shall not attempt to rule over him, because the woman was created for the man and not the man for the woman."[2]

The dependence of the married woman had probably been most keenly felt, because the law made the husband the master in the home. It is true that legislation during the last twenty years had attempted to extend the wife's powers. Favorable tax legislation made it possible for the married woman to take part in the political life of the local community, either as officeholder or voter, but her private rights as member of the family, were not enlarged. Both the Commission and numerous speakers on the floor of the Riksdag expressed the belief that the falling marriage rate among certain classes of people was to a great extent due to the dependent position, in which the husband's guardianship placed the wife, in spite of the fact that the dignity of womanhood was rapidly growing and gaining for it privileges, which public sentiment granted but the law withheld. The Commission therefore felt its most important function to be the codification of the sentiments and practices, which had gradually developed and been given social sanction of extralegal nature.

The whole law regarding the economic and personal relations between husband and wife is based on the conception of marriage as "a union between two free individuals with mutual duties to respect each other's needs and desires."[3] The

[2]Quoted by Senator Larsson in a speech in the Senate. See *Första Kammarens Protokoll, nr.* 34, 1920, p. 64.

[3]*Lagberedningens förslag etc., IV*, p. 160.

aim of the law is "to create complete legal equality of husband and wife in the marriage." This aim has been reached by abolishing the old institution of guardianship, by distributing the powers of control, so far as property is concerned, and by securing the wife's economic position, giving her an equal voice with her husband in the management of the household and the bringing up of her children.

"Husband and wife owe each other faith and assistance and shall jointly work for the welfare of the family," says the first paragraph of the fifth chapter. This means that from now on the wife has the same independence in her home and her relationship with her husband and children, that the husband has always had. The result is that she must accept the same duties of supporting the family that her husband has. The law recognizes, however, that her work in the home constitutes a fulfilment of that duty and that housework is as dignified, as valuable, and as necessary as the husband's work outside the home. But—the housework does not give the wife any cash returns. It earns her, however, the right to have sufficient funds placed at her command to meet all the needs of the household and those of her own. Money given her for this purpose is her own private property and really represents her contribution to the family support. Should her husband fail to supply her with money, i. e. should he stop supporting the family, she can ask the court to remind him of his duties. It is no longer necessary for her to leave her husband in order to make him support her, although that was the situation under the old law, when a wife, who retained her affection for her husband and did not wish to leave him, had to apply for poor relief, if he failed in his duties to supply the family with the necessities of life. In order to be able to make perfectly fair estimates of the respective duties of support, incumbent upon both husband and wife, they are by law required to inform each other in full of their financial condition and resources. The old law gave the wife no right to make a contract with a third person for the supply of necessities for the family, unless she had her husband's express permission. The new law gives her the right to enter into any contract for the purpose of meeting the requirements of the household or the education of the children and in doing so the contract shall be considered as binding her husband as well. Of course, she can-

not expect her husband to become jointly liable with her for a debt, which was incurred to meet an expense, which does not harmonize with the social and economic status of the family.

The duty of support, which ends in case the marriage is annulled, remains even though the family is broken up by separation or divorce. It is mutual, but will naturally fall upon the husband alone in most cases. The duty, however, becomes nullified in case the needy spouse is the one who caused the rupture. Alimony can be paid either in a lump sum or in installments. If the latter, the court may at any time and upon the petition of either spouse make adjustments in the amount. The installments are automatically revoked by the marriage of the person receiving them.

The law makes no attempt to restrict a wife's personal activities in or outside the home. She is urged to "work jointly with her husband for the family's welfare", but no longer is it necessary for her to confine her work to the household. Her husband could, according to previous legislation, demand her services, a situation which no longer exists. If she desires to dispose of her labor power to a third person and makes a contract with him to that effect, this contract is perfectly legal and valid. The law recognizes that conditions might arise when the welfare of the family demands that she accept outside employment and her power to do so should no longer depend on the consent of somebody else, even though that somebody may happen to be her husband. "She must have the right to dispose of her labor power just as her husband does of his," writes the Law Commission.[4] If she feels that her happiness and that of the family is gained by placing servants in the home and accepting employment outside the home, the law supports her choice. It is no longer necessary for her to ask her husband's consent to engage in business.

The old code gave to the father the guardianship over the children. He decided the extent of their education, and chose their religion and their life's work. It is natural that a mother would seriously object to a stipulation in the law, which gave her no legal hold on her children. "The child," says the Commission, "is no closer to the father than to the mother and the father has, as a rule, no greater opportunity

[4] *Ibid.*

than the mother of testing what is best for the child. Usually the child stands in much closer intimacy to the mother and particularly during the early years of a child's life is the mother more fit to decide the questions affecting it. The father's right to settle all problems alone becomes particularly offensive if he uses it to place the child outside the home for its education and thus deprives its mother of its companionship and the chance of close supervision over it."[5] The Law regarding Children in the Marriage, which went into effect at the same time as the new marriage and divorce law, states that "a child is to be under the care of its par ents until the age of twenty-one or until married."[6] It never uses the word father or mother so long as it discusses an unbroken family. Should either parent die, the other becomes the sole guardian of the children. Of course, there might be disagreements as to what should or should not be done for a child's education, etc., but the law hopes that such differences be settled without the aid of any outside agency. As a last resort, a court decision may be asked, the court simply determining which parent should be given the deciding voice in the matter and in no way attempting to solve the particular problem involved. In its action, the court must again be guided by what it believes to be the true welfare of the child.

With the disappearance of the husband's guardianship, he also loses the right to be his wife's representative at the bar of justice or elsewhere. Her right to speak for herself has now become general.

As to property ownership, the old code provisions were lacking in unity and logic. "The legislation has previously rested on the principle of community of property, with the exception of inherited property or previously acquired real property, and the placing of all property under the control of the husband. So long as this principle was in force without exceptions the rules were simple enough. When attempts were later made, at different times and by various means, to strengthen the position of the wife without entirely changing the systems of property ownership, it was possible only by departing, in special instances, from the principle. As a result the existing law includes varying and

[5] *Ibid*, p. 165.
[6] *Svensk Författningssamling, nr.* 407, 1920.

mutually contradictory rules. This lack of unity and logic in the law makes it highly complicated and difficult to apply."[7] According to the new law, all property shall be under the control of the owner, be it husband or wife. At the same time the old common or joint property system has been retained in a changed form. All property, which a spouse has at the time of the marriage or acquires later, with certain exceptions, is called his marital property. He controls this property and is, on certain conditions, allowed to do with it what he pleases. The other spouse has a latent right to one half of it, a right which never appears on the surface until the estate is divided on account of separation of property, separation, divorce, or death. This latent right imposes a duty on the owner of the property to administer it so that it is not unduly decreased, a condition which would be detrimental to the other. The owner of the marital property is also unable to dispose of it or mortgage it without the permission of the other, a permission which must be written and witnessed.

Any mismanagement of marital property may be brought to the attention of the court, and if a spouse has suffered an economic injury due to the mismanagement, he is entitled to compensation, a right which is carefully protected. The aim of all the provisions regarding the property of the spouses is, of course, protection for the wife, who in the majority of the instances, gives her efforts to the home and is therefore unable to become economically independent by her own labor.

The private property of a spouse is entirely his own with no conditions attached and can be used or disposed of by him at his pleasure. Property may be made private by either prenuptial or postnuptial agreement between the spouses; it may be private, if given to the owner on the condition that it remain private, or if inherited by him with the same condition attached.

The law makes each spouse liable with his private or marital property for debts incurred by him either before or after the marriage. He is not liable for the payment of the other's debts, unless they have been made to meet the needs of the family or with the understanding that they were to

[7] *Lagberedningens förslag etc., IV*, p. 171.

be joint in nature. Since the law regards husband and wife as two free individuals, they can also enter into valid contracts with each other, a right which the law carefully circumscribes to protect creditors.

Formerly, prenuptial agreements could be entered into between husband and wife for the purpose of retaining controlling power over property declared private by the agreement. Such an agreement can now be entered into for one purpose only. It can either declare private property marital property, or vice versa. Formerly, valid only if entered into before the marriage, it is now binding even though it may be drawn up later. Ordinary gifts, in harmony with the social status of the family, may be given by one spouse to the other without any agreement, subject to conditions, which aim to protect both the receiver of the gifts and the creditors of the estate.

Should either spouse abuse his right to control his own marital property or in other ways so manage his economic affairs that his family suffers, the other may apply to the court for separation of the property. This can also be brought about in case the estate of a spouse has been surrendered to the creditors or if husband and wife have mutually agreed to the action, even though all the above reasons may be lacking. The court will, upon receipt of the application, decree that the property be separated. When the actual division is made, a spouse, who can prove that his interests have been seriously injured by the other's abuse of his controlling power over his marital property, may demand and receive compensation for the loss and, in some instances, damages.

In case either spouse dies, the law protects the other's interests in a very adequate manner. According to previous legislation, the right of inheritance has been entirely governed by the principle of blood relationship, making it impossible for a spouse to inherit from the other. Instead, the former had a preferential right to one twentieth of the chattel property of joint nature. At any rate, he could take from the estate "his wedding ring, bed, and necessary clothing," even though the value of this might exceed one twentieth of the joint property. A widow, besides, had a right to her morning gift, which was given her only in case she was childless. This gift was to be taken from the husband's

share of the joint property and was to consist either in real property to the value of one sixth of his share or in chattels to the value of one twentieth of his share. The chattel property became hers but in the real property she received only a life estate. If the deceased left no heirs, the property belonged to the state or in some cases to the municipality. Of late, the state has usually relinquished its right in favor of the surviving spouse.

If a spouse dies intestate, the new law which gives to the surviving spouse half of all the marital property, when the division of the estate is made after the other's death, gives him the right to inherit the entire property of the deceased, should the latter leave no heirs, i. e. children, natural or adopted or their descendants, parents, brothers or sisters, nieces or nephews. In case no children are left, half of the property goes to the surviving spouse, the other half to the heirs. If children or their direct descendants are found, the entire property of the deceased is inherited by them. Of course, the property can, by will, be disposed of at the testator's pleasure. The above rules do not apply if, at the time of the death, husband and wife live apart or if a petition for separation, divorce, or annulment has been made. The morning gift has disappeared, since the law, without it, gives sufficient protection to the widow.

The new law also provides for the establishment of a central registration bureau, a Marriage Registry, to which the courts must supply certain information regarding divorces, separations, separation of property, etc. The records so obtained shall be published and issued periodically by the government. Copies shall be sent to the courts and the local administrators of justice, where the public shall have free access to them. In a Royal decree issued after the law was passed, the Central Statistical Bureau was given charge of the Marriage Registry.

The Law in the Riksdag.

The battle in the Riksdag was centered more about the underlying principles of the law than about its special provisions. "Statements of principles" were numerous in both Chambers and represented highly divergent and sometimes amusing positions. A member of the Legislative Committee, Professor Reuterskiöld, in a lengthy reservation against the opinion of the Committee, accused this body of being ig-

norant of the real nature of marriage. The Law Commission was characterized by him as a body prompted by a well-meaning desire but, unfortunately, supported by a "lack of ability." To think of marriage as a union between two free and equal individuals would be very dangerous to society, not to mention the inaccuracy of the conception. Marriage is not an agreement between two individuals but "a unity to which these individuals stand in a certain relationship and which consists of a power over both of them, the home, which is not alone the subject or aim of their activity but a self-contained society, in which both of them shall as members be active." In short, the family is a personality, something greater and bigger than the sum of its members. To imagine that love and unity should form the basis of this union was another misconception fostered by the Law Commission and the Legislative Committee. Duty is the necessary foundation for marriage, and since the law does not emphasize this feature it was fit measure for "a people in decadence."[8] In an address to the Senate, Mr. Reuterskiöld formulated his objections more concisely. "One conception [of marriage] builds upon the foundation of love and love alone. When love dies, the marriage is ethically broken and a moral duty to dissolve the marriage arises. The other conception builds upon duty and not upon love. For this conception, love plays but one role in marriage; where it is found, a happy marriage exists, because a happy marriage consists in the voluntary and willing performance of the ethical duties. But if the home, if the family shall form the foundation of society, this foundation will be frail indeed, were it to depend solely on the emotion of love. If this love fails, the foundation fails. But, if we build upon duty as our forefathers have done for centuries, and they built their marriages many a time upon duty alone but on such a strong sense of duty that it overshadowed everything else, even the absence of love—then we shall get strong homes and lasting marriages."[9] The objection was also made that in recognizing the individualities of husband and wife the law made of marriage a contractual relationship, which in its important consequences resembled a partnership, with the result that the law had

[8] *Första lagutskottets utlåtande nr.* 27, 1920, pp. 118-27.
[9] *Första Kammarens Protokoll, nr.* 34, 1920, pp. 30-31.

been filled with explicit provisions for meeting all imaginable difficulties arising between the partners and to protect them against each other.

It was, of course, inevitable that the law should be termed an expression of feministic thinking. One Riksdagsman solemnly declared that it was an evidence of a decaying "masculine culture". "Would it be a gain to humanity if feminism were to progress and exercise an even greater influence than masculinism? Permit me to doubt it. I really wonder if the women as a whole, with the exception of the feminists, are very much attracted by any form of feminism? I believe that manliness is even for them most attractive."[10] Several speakers held that the law did not represent the views of the Swedish women, that the woman member of the Law Commission belonged to the upper classes and was, consequently, unable to speak except for a very small group, and that if the law were to pass, the most dire results would come. One inevitable effect would be the lowering of the marriage rate, since the new law, although favorable to the women and actually designed to "entice" them into marriage, would deter the young men of the country from entering a relationship where their authority would at every turn be questioned and where the peace and calm of their proverbial "castles" might at any time be invaded by the law.

It was declared that the law was a distinct case of class legislation, and did not at all suit the people of the country districts, while it placed upon a secure basis the ever increasing "free marriages", "Stockholm marriages," "concubinates", or whatever name they be given. The extension of the wife's right to control her own property and the disputes that would undoubtedly result, would lead society to cause unwarranted interference in the affairs of the home, "the state within the state." What dangers might not lie hidden in the power of guardianship over her child, which the law granted the mother? Would not her ambitions cause her to give, or rather try to give, the child an education or a higher social status which would prove injurious to the family finances, to the child, and to society? Certainly it would have a detrimental influence on the practical pursuits, such as agriculture and the trades, should the feminine point

[10]Mr. Magnusson in a speech in the second chamber. See *Andra Kammarens Protokoll, nr.* 40, 1920, p. 38.

of view become dominant in the guidance of the child's education. All of which goes to show that the law did not lack opponents.

If those who saw in the law a real danger to society were liberal in the expression of their views, the same holds true of the supporters of the measure. According to them, the law was based on a conception of marriage, which looks upon "marriage as an ethical institution, which places equal demands for selfsacrifice and duty upon husband and wife, while giving to both the same vital values. It should rest on a unity won by mutual consideration and not on a duty of obedience. Marriage, as a legal institution, should not be endangered by being built upon the same ethical foundation upon which it rests as an ethical community."[11] The aim of the law is "to create legal equality between husband and wife.....and the proposal is thoroughly characterized by a desire to strengthen the family and the home, building upon the principle that within the home there should be freedom and individual responsibility."[12] Senator Lindhagen commended the proposed law because of its obvious attempt to foster spiritual values, as seen by the provision which recognized a wife's earnings as important as her husband's in contributing to the maintenance of the family.[13]

The expressed fear that the minute legal provisions would mar the spiritual nature of the marriage by making it a kind of partnership was met, first of all, by the Legislative Committee. "Such fears are, in the opinion of the Committee, unfounded. They seem to be based on a misconception of the aim of marriage legislation. The civil law should not and cannot decide upon the content of a marriage, a content which is of spiritual nature, but should limit itself to regulating its external and material phases. The result is that marriage appears in the laws as a complex of material rights and duties. The great mass of its provisions have reference to the solution of disputes arising between spouses, and have therefore no importance for normal marriages. Because these provisions have been made more complete in the new law, it does not necessarily follow that marriage has thereby

[11]Stenbeck, E., *Den nya äktenskapslagen och kritiken däremot*, p. 6.

[12]State Councillor Undén in the Second Chamber. See *Andra Kammarens Protokoll, nr.* 40, 1920, p. 63.

[13]*Första Kammarens Protokoll, nr.* 34, 1920, p. 68.

become materialized. Unity in the marriage does not suffer because its foundation, in agreement with the ideas of the age, is assumed to be love and concord, won by mutual consideration, instead of the guardianship of the husband."[14] Professor Ekeberg, a member of the Commission, wrote, "It is obviously natural that most marriages are arranged without the slightest reference to the law. This has been the case until now, and will continue to be the case. Is it possible that it would injure anyone's morals to have the law aid unfortunate fellow humans and, if necessary, try to strengthen their sense of duty?[15] "The law is not written for the happy marriages. The happy families of today know little about the marriage law.....In most marriages, the husband and wife adjust themselves to each other's wishes .....The aim of the law has been to seek an adjustment of conditions that could be improved and give the wife a more secure position in the family. Too much is expected, if the law is asked to foster happy homes."[16] Senator Åkerman very wisely suggested that both the enthusiasts and the violent opponents might take the matter calmly, because "a law makes no miracles either for good or for bad." To those who feared that the new law would destroy the home, he said that so far as he could see "the destroyers of the home were bad temper, desire for power, unfaithfulness, drunkenness, sickness, poverty, and other misery,"[17] which no marriage legislation could combat.

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[14]*Första Lagutskottets utlåtande nr. 27*, 1920, p. 11.

[15]Article in *Aftonbladet*, Feb. 20, 1920.

[16]Mr. Hederstjerna in the Second Chamber. See *Andra Kammarens Protokoll, nr.* 40, 1920, pp. 41-42.

[17]*Första Kammarens Protokoll, nr.* 34, 1920, p. 19.

PART THREE

The Social Significance of the New Marriage Law

CHAPTER SEVEN

THE SOCIAL SIGNIFICANCE OF THE NEW MARRIAGE LAW

"The Law is only a memorandum. We are superstitious and esteem the statute somewhat; so much life as it has in the character of living men as its force."

Emerson.

The last century has seen what is probably the greatest relative progress from a social point of view, that the world has witnessed. Unknown forces have been discovered and new energies harnessed, so that phenomena which we regarded as almost supernatural a few years ago have become commonplace to the man in the street, who is no longer sceptical of the achievements of science. Our control over the forces of nature has greatly increased and the revolution that has occurred in transportation has made the world many times smaller. Our ingenuity has opened new ways of enlarging our food supply and creating other necessities of life. Our pursuit of new sensations has made us devise more and better means of satisfying our desires. In all the material things of life we have been increasingly successful and from this point of view our social development has been little short of marvelous.

But, while we have spent our powers in building up a material civilization to satisfy our bodily wants, we have unwittingly released social forces that have moved beyond our control. We discovered steam and invented machinery, which made our industrial development possible, with the result that we have created a society, which instead of providing greater freedom and happiness and opportunity for individual development, is making men more miserable, poorer. No matter how wonderful our inventiveness has been, as social engineers we have been failures.

It is our good fortune today that we are beginning to recognize that, while we have been interested in machines, the men behind them have been neglected. It is a healthful

sign that we are teaching the necessity for a new individualism, an individualism, which does not have selfish aims, but desires to develop in each individual all his best qualities in order to make him an intelligent member of our social order. Outside the University of Lund stands a piece of sculpture, which symbolizes this trend in our social thinking. Out of a massive rock, a powerful man is seen to emerge. He is struggling to free himself from the gray granite which is fettering his body. It is the spirit of man breaking the shackles, with which an artificial civilization has chained him. It is the symbol of a struggle, which has increased in power and intelligent direction, parallel with the development of our material civilization.

Social progress in Sweden during the last century has been characterized by an increasing emphasis on human values. This is shown in all phases of its community life and has received expression in its laws. The last few decades, in particular, have witnessed a wave of social legislation, a purposeful "socialpolitik", which has brought the country to the front rank in this respect. Not the least important of these recent measures is the marriage and divorce legislation, in which the individualistic tendency is clearly seen. The forces that have brought about this awakening of the social conscience have been, first of all, the growth of industrialism, followed by a rise of trade unionism, the growth of social democracy, and the movement for the human rights of womanhood and motherhood. In order to understand the peaceful revolution, which has occurred in Sweden socially, industrially, and politically, it will be necessary for us to make a short survey of these movements.

The Growth of Industrialism.

Sweden, although one of the largest of the European countries so far as area is concerned, has less than six million inhabitants. Its 173,000 square miles is to a large extent covered by great forests and mountains. Only twelve percent of the land is arable or natural meadow; of this, the largest acreage is found in the southern and central parts of the country.[1] During the nineteenth century, the cultivated land quadrupled, but in spite of that fact the number of people engaged in

[1]Sweden, however, has one hectare of cultivated soil or meadow per inhabitant, while the figure for Western Europe is ⅔ hectare. See Guinchard, J., *Sweden,* vol. 2, p. 14.

agriculture materially decreased. The reason is to be looked for in the development of industrial enterprises.

The industrial revolution came to Sweden very late. While in 1870 only twenty percent of the people were engaged in industry, commerce, and transportation, forty-five percent were so engaged in 1910.[2] As industry developed, agriculture, which had been the great source of employment, decreased in importance. A steady stream of men from the farms brought a new labor supply to the manufacturing industries and the mines. In 1870, seventy-two percent of the people were engaged in agriculture and fishing; in 1910, only forty-eight percent were found in this work. From thirty thousand industrial workers in 1860 to over four hundred thousand in 1920 is a difference, which clearly shows the revolutionary change that has occurred. This expansion has been made possible by the progressive development of Sweden's "white coal fields", the tremendous latent power of its numberless waterfalls and turbulent rivers. The exploitation of the rich iron ore deposits of Lapland, yielding an ore which in quality ranks first in the world, and the extraction of the riches of the great forests have made possible the development of world markets, which promise to increase in importance. Today Sweden ranks next to the United States in the value of its exports of lumber and its products.

This development of industry, which caused the national wealth of Sweden to double during the period from 1885 to 1908, brought with it the problems of an industrial society. The tendency toward centralization of wealth and control created a labor problem, and out of the inevitable conflict between employer and employed emerged a class-conscious working class, which is second to none in its intelligence and the quality of its leadership. In their struggle for liberty and happiness, the workers have devised two powerful weapons, a strong trade union movement and a political party, which has become the most powerful party in the country.

The Trade union movement. Workingmen's associations in Sweden date back to the 17th and 18th centuries, when the journeymen organized into brotherhoods for mutual aid and protection against their masters.

[2] *Ibid.*, vol. 2, p. 15.

That these associations were not regarded with any great pleasure by the latter can be gathered from the fact that a Royal decree of 1752 forbade the journeymen printers the right to peaceful assembly, ordered them not to "discourage an apprentice or advise him to quit the trade," and specified that a master printer had the right to take as many apprentices as he wanted. The masters had suspected that the journeymen wanted to keep the wage high by attempting to gain a monopoly on the labor.[3] Several other trades had similar organizations, which largely had the nature of benefit societies and which seem to have lost their energies by the beginning of the nineteenth century.

In the sixties and seventies a new wave of organization came. The workingmen's associations were formed, a phase in the development of trade unions, which seems to be universal. They were of the same type as our own National Labor Union. "Their form of organization was too loose and their program, a mixture of humanitarian, political, and benefit features, was too weak for the new conditions in which the worker found himself due to industrial and social progress. The influence of the worker was also gradually displaced by that of other elements. The workingmen's associations could not by their efforts create an independent labor movement in Sweden or put their stamp on it. They did, however, leave an indelible mark in the worker's wakening realization of the need for organization."[4]

The trade union movement in Sweden was powerfully influenced by the experience of the great industrial nations, particularly England and Germany. The first craft union was formed in Stockholm as early as 1846 by the typographers, but not until thirty years later did the movement make any progress. In 1872 the bookbinders organized, in 1874 the hatters, in 1876 the paperhangers, and in 1880 the carpenters. All these unions had their birthplace in Stockholm.[5] Before any attempts were made to unite the locals of the same craft into national unions, the need for cooperative effort had been felt. In 1882, the woodworkers' union of Stockholm issued an invitation to other local unions to elect

[3] *Fackföreningsrörelsen, I, Sverge,* p. 18.
[4] Söderberg, Ernst, *Svensk arbetarrörelse,* p. 5.
[5] *Fackföreningsrörelsen, I, Sverge,* pp. 39-40.

delegates to a city central committee. These delegates met the following year and drafted by-laws. The aim of the organization was "to unite the workers of the different trades in a strong labor party to work unitedly for reforms necessary for a social development founded on a sound and reasonable basis."[6] A program was prepared, according to which the committee, among other things, was to work for a ten-hour maximum day, sanitary inspection of workshops, a public employment bureau, old age insurance, state subsidies or loans for workers' associations and cooperative enterprises, arbitration in labor disputes, equal franchise, better schools, etc. The program was later changed in many respects but the occurrence of several strikes and the growth of the Social Democratic Party, the program of which was in many respects like that of the Committee, soon caused the latter's decline. The need for national organizations, which could provide better support in industrial disputes, was also felt. In 1886, the first Scandinavian trade union congress was held in Gothenburg. This congress passed a resolution favoring the organization of national trade unions. The same year the typographers formed their national union, followed by the mail clerks. The painters organized on a national scale in 1887, and the iron and metal workers the following year, after which progress was very rapid.[7]

To gain still greater strength, the national unions united in one great federation, the Federation of Labor, organized in 1898. Its aim, as formulated at its first congress in 1898, was "to give financial support to a union attacked by a lockout, if the latter affected a certain percentage of that union's workers."[8] In 1900, its activity was enlarged to include "efforts to organize workers" and the preparation of reports regarding union labor in the country. From 1909 on, the Federation has also given financial support to strikes. According to the latest by-laws, those of 1917, the Federation aims "to organize workers into unions and to determine general policies, particularly in respect to the attitude toward the employers' associations; to unite locals into national unions; to spread the knowledge of social and economic

[6] *Ibid.*, pp. 51-52.
[7] *Ibid.*, pp. 60, 94 *et seq.*
[8] *Ibid.*, p. 176.

problems among the trade unions; to make studies and comprehensive reports of the trade union movement in the country; to lend financial support in case of lock-outs or when the right to organize is threatened; to give financial support to unions in their attempt to build assembly halls and 'People's Houses'; to maintain the relationship with corresponding organizations in other countries and work for mutual financial support between them."[9] In 1920, the Federation consisted of 31 national unions with 2,799 locals and a membership, which, from 7,000 in 1899, had grown to 280,029 in December, 1920.[10] This means that some 57 percent of the Swedish workers are members of the Federation. If we add to this the membership (about 110,000) of the independent unions, such as the railroad brotherhoods, the textile workers, the mail clerks, the electrical workers, the seamen's union, the agricultural workers, etc., which, although fully in sympathy with the Federation have not joined it for financial reasons, the labor organizations would probably include between sixty and sixty-five percent of all the workers in the country, a very remarkable percentage, which has no equal outside of Scandinavia and which to a great extent explains the trend of social legislation in Sweden during the last fifty years.

The big general strike of 1909 taught the workers a lesson. The labor congress, which met shortly afterwards, went on record in favor of a gradual change from craft unionism to industrial unionism, which would provide a much stronger weapon of defense. A committee was appointed for the purpose of working out new by-laws. The congress of 1912 was presented with the proposed draft, which did not depart from the status quo, except that it recognized the importance of industrial unionism and expressed itself favorably toward it. The Federation today consists of both craft and industrial unions. The tobacco workers, the metal workers, the shoe and leather workers, the saw-mill workers, the stone workers, the brewery workers, the bakers, and the miners are organized by industries instead of by crafts.

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[9] *Stadgar för Landsorganisationen i Sverge . . . antagna i augusti* 1917, pp. 3-4.

[10] *Berättelse över Landsorganisationens verksamhet år* 1920, pp. 65-66, in proof.

The Social Democratic Party

Parallel with the development of the trade unions for the purpose of protecting their interests in industry, the workers formed the Social Democratic Party for political action. Although there is now no direct connection between the Federation and the Party, the latter is largely composed of union members, and many high officials in the Federation hold important offices in the Party, which was organized in 1889. For administrative purposes, the country has been divided into districts and the latter into workers' communes, the local branches of the Party. These communes are usually composed of the trade union locals. Any local union can by a majority vote decide to join the commune. The Federation, in 1900, actually tried to make membership in the Party compulsory for its members, but opposition made it inadvisable to maintain this policy.[11]

While, in the economic field, the workers have securely established the principle of collective bargaining, and gained a great improvement in working conditions, etc., the political activity has had even greater results. The proportional representation law of 1909 gave the workers a better chance to get a hearing in the legislative halls and the removal of the economic and the sex qualifications for voting has resulted in an ever increasing number of Social Democratic and Liberal members in the Riksdag. While the former party had only one representative in that body in 1902, the number had increased to 143 in 1921.[12] The Liberals have shown a great leaning toward state socialism and have been active allies of the Social Democrats in the promotion of social legislation. The best indication of the change in political tone is the composition of the Senate, the First Chamber, which, until 1920, succeeded in maintaining a staid conservatism. The increase of Social Democratic senators from 13 in 1914 to 50 in 1921 has thrown the balance of power to the liberal groups. The hope was expressed that when the women of the country were given their first opportunity to vote in national elections, there would be a healthful change toward conservatism, but this hope was crushed in the election of 1921. With the aid of the women voters, the Social Dem-

[11] *Fackföreningsrörelsen, I, Sverge,* p. 160 *et seq.*
[12] *American-Scandinavian Review,* December, 1921, p. 829.

ocrats alone registered 37 percent of all the votes and placed 143 members in the Riksdag, fifty of them in the First Chamber. Together with the Liberals, the Left Socialists, and the Communists, they make up sixty-three percent of the Riksdag, an overwhelming majority. It is, in particular, to Hjalmar Branting, the present premier of the first purely Socialistic ministry in Sweden, that the Social Democratic Party owes its greatness; i. e., if it is possible to name any one individual. His able statesmanship and clear vision have saved it from many of the pitfalls, which were, either intentionally or not, placed in its way.

The Woman's Movement.

There have been several important reasons for the rapid development of a movement for the independence of women, which in Sweden has taken two very distinct forms, one aiming to enfranchise the woman, the other aiming to improve her social status by means of education, one stressing equality with the man, the other emphasizing the supreme dignity of motherhood and wifehood, one headed by Mrs. Wicksell and others, the other championed by Ellen Key.

Various causes have operated to produce a great surplus of women over men in Sweden. In 1910, when the census was taken, there were 2,698,729 men and 2,823,674 women, the men making up 48.9 percent of the population. This difference between the number of men and women has always existed, but has not made its appearance until mature age has been reached. Thus, of every 100 children born in 1910, 51.4 percent were boys. Due, however, to a larger infant mortality among the boys and a higher mortality after the age of eighteen, there is an increasingly greater surplus of women over men. This condition seems to be slowly changing to a more favorable equalization. In 1750, for instance, the proportion between men and women was as 47 to 53.[13]

It is, however, the proportion between unmarried men and women in the marriageable age which is of still greater importance in this connection. An examination of statistics indicates that at the end of 1910 there were 482,307 unmarried men between the ages of 20 and 50, while the number of unmarried women between 17 and 45 was 580,817, or 120

[13]Flodström, I., *op. cit.*, pp. 582-83.

women to 100 men. Even this is an improvement over the year 1750, when there were no fewer than 154 women of the ages mentioned to each 100 men.[14]

In addition to this great surplus of unmarried women of working age, it is to be noted that the age of marriage is quite high, the average being 30 years for the men and almost 27 years for the women. When we also consider the fact that the marriage rate has decreased to such an alarming extent that the Riksdag has even taken official notice of the fact and voices have been raised in favor of governmental measures to aid the formation of families,[15] we can understand that the ground has been well prepared for a strong woman's movement. From 1750 to 1910, the number of married women per million of total population decreased from 113,637 to 87,329, while for Western Europe today, the average number of such women is equal to the number in Sweden 150 years ago.[16]

The reasons for this preponderance of women and the low marriage rate are primarily the growth of industrialism and a large emigration to United States. The latter dates roughly from the early forties. From that time up to 1914, some 1,350,000 persons emigrated, while only 280,000 returned, a net loss of more than a million. These emigrants were largely from the farms. They were young in years and the men outnumbered the women by far. The economic conditions, which drove them to seek their fortunes in a strange country, forced those who remained to defer their marriages until they were better able to support a family. The desire for a higher standard of living, and the transition from an agricultural to an industrial society also operated to limit the family. Were it not for the fact that Sweden has such a low mortality rate,[17] and, in consequence, such a long expectation of life (an average of 54 and one half years for men

[14] *Ibid*, p. 583.

[15] See motion by Senators von Koch and Petrén, *Första Kammarens Protokoll nr.* 28, 1920, p. 82.

[16] Guinchard, J., *op. cit.* vol. I, p. 134, table 23.

[17] 14.89 deaths per thousand of population in the decade, 1900-1910, the lowest ever observed in any European country, Scandinavia excepted. In the age group 0-5 years, the mortality in Sweden is 41% lower than in Western Europe, 34% lower than in France and 31% lower than in England. In every age group between 15 and 75 years, the mortality is 25% lower in Sweden than in Western Europe. *Ibid.*, p. 138.

and 57 years for women) the genetic growth of the country would practically stop.

What has happened as a result of the conditions brought out by these figures? The existence of a large surplus of women without any opportunity to establish a normal family life, caused their early absorption by the rapidly developing industries, and the relatively high marriage age gave most women an opportunity to be independent, in some way or other, before marriage, if they married at all, facts that have contributed greatly to the purposeful agitation, which the women have carried on for the improvement of their position. Woman's work, it has been said, is in the home. This is no longer such a self-evident truth as it was a hundred years ago. Her occupation as housewife, a dignified position, which requires a varied ability, has been much encroached upon by our modern industrial life. She was formerly occupied in the home with the preparation of food, the making of clothing, etc. Today the clothing is made in factories, and much of the food in dairies, canneries, and other industrial establishments. It was as natural for the woman to follow her job out of the home as it was for the man to do so, when the industrial revolution came and crushed the handicrafts. It is therefore not to be wondered at that we find women composing almost the entire working force in the textile and clothing, dairy and food industries. In 1918, three fourths of the textile and clothing workers were women, while in the tobacco factories 85 percent of the workers were women; in the chocolate and candy factories, 83 percent; in the paper box industry, 65 percent; in the dairies 65 percent; in the fur trades and the liquor trades, 62 percent; etc.[18] The last couple of decades have seen the women in mines and factories increase from 38,877, in 1901, to 50,516, in 1918, or about 13 percent[19] of the entire number of workers employed in gainful occupations, a figure which would be probably seven or eight percent higher did it include women workers in other fields.

The need for the organization of these workers was felt already in the eighties, but it was not until 1902 that the Women's Trade Union was formed. It grew out of the ef-

[18] *Sociala Meddelanden*, nr. 1, 1921, p. 35.

[19] This includes only women of age. If those under age are included, the figure would reach 61,187 for 1918. *Ibid.*

forts of Stockholm's General Club for Women to organize the women workers of that city. It had but a short existence and in 1908 it merged with the Tailor's Union. The Federation of Labor made early attempts to organize the women, and was very successful.[20] In 1907 over 12,000 women belonged to the Federation, but the big strike of 1909 more than cut the number in two. At the end of 1910, 5,715 had joined, a figure which reached the grand total of 32,787, at the end of 1920,[21], and undoubtedly represents more than 50 percent of the women workers, probably a greater percentage than found in any country outside of Scandinavia.

The dependence of women was felt early. Unmarried, they were the wards of their fathers and married they simply changed guardian. True to the belief that woman is created for man, she was given the training necessary to make her a good housewife and mother. Her aspirations to enter the domain of the man and compete with him in the trades or professions were discouraged and often derided. All her efforts to have the guardianship exercised over her lifted when she reached mature age were successfully resisted. The paternal attitude maintained in the matter by her opponents, is seen in this opinion of the Göta Appellate Court in 1826. "As a ward, the woman, closely bound to her family circle, has so far avoided the temptation of trying to create her own happiness through the inheritance received from father or mother.....She has been saved the sorrow of weeping over the results of badly planned enterprises and carelessly assumed obligations; in short, she has not yet known the extent of her own weakness. Led by the faithful hand of friendship, to which the law has entrusted the care of her property, she has avoided falling victim to the evil plans of the tempter, and has, when she sooner or later enters marriage, not brought with her the idea that the mature woman is as good as the mature man. Instead, she has regarded her husband as her chosen guardian, who out of love and friendship has taken care of her affairs, and has been fired by the true feeling of submissiveness, which shall always be the necessary basis for happiness in marriage."[22] It was

[20]Meyerson, Gerda, *Arbeterskornas värld*, p. 153 *et seq.*
[21]*Berättelse över Landsorganisationens verksamhet år* 1920, pp. 66-67.
[22]Linder, Gurli, *Kvinnofrågan i Sverige*, 1845-1905, pp. 11-12.

this widespread attitude that Fredrika Bremer's facile pen tried to change.

It is interesting to note the importance which writers have had in furthering the movement for women's independence in Scandinavia. The pioneer work of Fredrika Bremer in Sweden and Camilla Colett in Norway foreshadowed the active propaganda by Strindberg, Ibsen, and Brandes and a host of lesser lights. Fredrika Bremer was most concerned with the position of the young girl in the home, unable to have her personal wishes fulfilled, when they conflicted with those of her father. In a novel, *Hertha,* published in 1856, she pictured this situation and was met by the most bitter criticism, a proof of the bravery of her action. She severely shocked the sensibilities of her male readers by making the heroine desirous of studying medicine and anatomy, and by permitting her to bandage the knee of a wounded fireman. "If it had been the *foot* but the *knee*—that is going a little too far," said an outraged critic who claimed that he had never found a girl in the age of ten to thirteen, who had had inclinations and ability for a deeper study of the sciences. "The best way and the only way by which a married woman can.....make a contribution to society is by faithful and silent (nota bene *silent,* mademoiselle Bremer) performance of the duties in the home."[23]

The work of Fredrika Bremer bore fruit. Her emphasis on the necessity of providing women with a better education resulted in their admission to professional schools and her labor for the removal of the guardianship over the unmarried women undoubtedly hastened the legislation in this respect. Already in 1845, a law had been passed giving a sister equal rights of inheritance with her brother, thereby changing a law, which had remained in force since the thirteenth century, which gave a brother the right to inherit twice as much as his sister. Ten years later, during the Riksdag of 1858, the unmarried woman was given her independence at the age of twenty-five, which age was lowered to twenty-one in 1884, thereby made to correspond with that of the man. Fredika Bremer herself was influential in the establishment of the Teachers' College for Women in 1861. In 1870, the universities were opened for women and in 1884

[23] *Ibid,* pp. 14-15. Quoted.

the University of Stockholm appointed Sonja Kowalewski to a Professorship, the first European university to accord such honor to a woman.[24] Since then the development has been rapid, until at present the bars have been lowered in all but a few cases. The State Church, for instance, has not yet decided to permit the ordination of women as pastors.

The work of the various organizations by women for the purpose of improving their political and social status has been highly successful. The first association of this kind was the Society for the Married Woman's Property Rights, established in 1873. It was the result of the neglect which, in the fight for the independence of the sex, the married women had suffered. It is, of course, natural that the emphasis of the pioneers should have been placed on freedom for the unmarried women, because of the special problems created by their great number and their preponderance over men. In 1895, the Society merged with the Fredrika Bremer Society, founded in 1884 for the purpose of promoting "a sound and rational development of the work for the advancement of women, morally and intellectually, as well as socially and economically." The latter has had a very successful career. The Social Democratic women have organized into one body, which in 1914 had some fifty local branches.[25]

It was not until 1902 that an organization for the promotion of woman suffrage was definitely formed. The National Society for the Enfranchisement of Women has not spent all its efforts on political agitation alone. Through its locals, it has spread the knowledge of social problems by discussion groups and lectures and has taken active interest in social work. Including the above mentioned societies, the number of women organized to gain political recognition was about 35,000 in 1914. The effect of their concerted efforts, primarily in the educational field the militant suffragette being unknown in Sweden, was a series of cocessions ending with a constitutional amendment in 1920, which gave the women the right to vote in national elections, their right to do so in communal elections having been given them years before. In 1922, two Social Democratic women, two Liberals, and one Conservative were elected to the Riksdag.[26]

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[24]Guinchard, J., *op. cit.*, p. 735 *et. seq.*

[25]*Ibid.*

[26]*American-Scandinavian Review*, January 1922, p. 41.

It is impossible to write about the progress of the feminist movement in Sweden without mentioning the contribution of Ellen Key. It was with apprehension that she viewed the indiscriminate demands of the early feminists for absolute equality with men in all fields of labor. She severely criticized their desire to imitate the man, instead of demanding freedom of opportunity and recognition of individuality, without sacrificing the home, which she considered the proper sphere for the woman. She became the champion of a glorified motherhood. To her the rights of childhood were even greater than the rights of women, and her influence is clearly seen in the child welfare legislation of the last decade. Her enemies, particularly numerous after her famous lectures in 1895-96 on "Misused Womanpower" and "The Natural Spheres of Labor for Women", have gradually come to appreciate the great value of her untiring efforts to realize, not so much political equality, as the opportunities for women to gain intellectual and moral freedom.

* * *

It is these movements that have colored the recent social legislation in Sweden. Their influence is unmistakably present in the Old Age Pension Law of 1913, in the Eight-Hour Laws of 1919 and 1921, in the Law of 1917 concerning Children born out of Wedlock, in the Poor Law of 1918, in the recently proposed Child Welfare Law, and finally, in the Marriage and Divorce Law of 1915 and the Law of 1920 concerning the Married Woman's Status. In a recent article in the Forum, a liberal monthly, a writer asks, "Who will question the statement.....that the socialistic labor politics has raised human values and filled cultural needs, that it has sharpened the social conscience and given rise to the protective legislation of today; that it has encouraged equality before the law and prepared the way for a general democratic development; and, that it has organized the scattered groups of guerilla warriors in the labor markets into well disciplined armies?.....Who will furthermore deny that the political movement among women has freed civic rights from the bond of sex; that it has given to the mothers and the children of the nation the legal protection necessary for the budding life of the group; that it has transformed marriage

legislation from a jurisdiction by patriarchs and pashas to one between free and equal individuals; and, that it has called the attention to and aroused interest in the various problems arising out of the surplus of women?.....The movement for the emancipation of women and the labor movement have deepened the public sense of justice and enlarged the social horizon, no matter what may have been their faults."[27]

It has been said that nothing shows the stage of a nation's progress toward social justice better than the position of its women. If that is true, the passage of the marriage and divorce laws of Sweden indicates that the social development of that country has reached a high stage. But perhaps these laws are simply the work of a certain political group? Criticism to this effect was heard at the time they were passed. It was said that public sentiment would not support them, because they were foreign to public opinion both in principle and in details. Laws, however, have not been rashly made in Sweden, a country whose people has of old been noted for justice. When the rest of Europe, during the Middle Ages, was devoting its time to the development of troubadour poetry, the literary efforts of the Swedes were spent on the formulation of their Provincial Laws, some of which can truly be called masterpieces, of which it has been said that they lack their equal, at least in Teutonic countries. It was this appreciation for justice that received expression in the "Rules for Judges", dating back to the 16th century. These rules, so excellent that they have been given a place in every edition of the Swedish Code up to this day, maintained that when a law becomes harmful it is no longer a law but an anti-law and should be speedily abolished.....Public welfare is the greatest law and what is, therefore, found to promote the welfare of the people shall be law, even though "All laws shall be such that they serve public welfare and the written law, in its wording, seems to prescribe differently."[28] Finally, the method of drafting and initiating legisla-

[27]Fogelquist, Torsten, *Samhällspolitik och klasspolitik. Forum* (Stockholm) January 1922, p. 38.

[28]*Domare-Reglor*, see *Sveriges Rikes Lag*, Schlyter's ed., 1886, Bihang, pp. 558-59.

tion[29] has aided in producing laws that have not been accepted until they have been found to be in accord with public opinion, particularly since the people have always maintained a deep respect for law. The knowledge of this national characteristic has made the legislator wary in the promotion of legislation that might injure this feeling, and, in consequence, encourage lawlessness and distrust. The Law Commission time after time reiterated that the marriage and divorce law was simply the codification of current practices and beliefs. "The law is only a memorandum," says Emerson. "We are superstitious and esteem the statute somewhat; so much life as it has in the character of living men is its force."

* * *

We are living in an age when mere authority is becoming more and more questioned. The individual is no longer taught to conform, but to differ, as long as his difference is conducive to group welfare. We no longer believe that it is necessary for the individual to sacrifice his freedom to benefit society; only by enlarging his freedom and creating new opportunities for its exercise does society make permanent gains. The link, which binds people together is community of interest. In the light of a common interest, an understanding of one another's problems, an appreciation of one another's difficulties is created. The more numerous a person's interests, the greater is his understanding and sympathy, and the wider his appreciation. With the growth of interests, therefore, his personality is enriched and he gains, as an individual, a freedom, which ignorance and poverty of interests have denied him. He becomes, as a result, a better member of society, since the quality of the society he

[29]A special Law Drafting Board prepares all laws, according to directions given. These laws are passed on by the Law Council, composed of three justices of the Supreme Court and one of the Crown Court. If found constitutional they are embodied in Royal propositions to the Riksdag, which acts. In the case of laws of special importance, as the marriage and divorce laws, the old age pension law, etc., a special commission composed of experts is appointed. This commission begins researches, studies of experiments already made in other countries, etc., and finally makes its recommendation, substantiated by all special studies made. This report is usually submitted to a few hundred or more officials and others interested throughout the country. They are given ample time to read the report and make suggestions, which are then taken into consideration by the Cabinet, which prepares the Royal Proposition. It is a lengthy process, but serves its purpose.

lives in will be determined by the quality, the number, and the range of his interests. Society is then, in the last analysis, within its members and the rapidity of social progress is dependent on the number of individuals in the group, who have come to realize keenly their interdependence and the necessity for mutual understanding and aid. The most significant movement in modern life is the rise of an individualism, which does not pursue the tactics of "the devil take the hindmost" but is mindful of the rights of others. "The idea that it is the right, or even a duty, to assert one's own individuality is characteristic of our age."[80]

The social setting of the marriage and divorce law, which has formed the subject for this monograph, is then clear. It is simply an expression of "the struggle of the spirit of man for freedom", a very good evidence of a nation's progress toward social justice. There have been favorable conditions for this progress in Sweden, one of which is a liberty loving people that has not known subjection by foreign masters, another being the appearance of certain social problems, discussed in this chapter, that have inevitably brought about the recognition of mutual rights and duties and an increasing need for freedom of individual growth and expression. The Swedish nation has apparently recognized that it is in the promotion of agencies to meet this need for growth and expression that social institutions find their greatest service. The recent social legislation shows that a consciously directed progress is gradually bringing the nation to a higher stage of civilization, which means "that personality is liberated within society; that, finding its significance within itself, it more freely relates itself to, and cooperates with, that of others; that, therefore, order ceases to consist in uniformity and suppression and becomes a condition of liberty, being based more on conscious common will and less on an institutional acceptance of tradition; that the sanction of conduct is more the inward sense of responsibility and the application of the necessary ways of adjusting means to ends. It means that there is a greater respect for personality; that persons are both recognized and recognize themselves as being of intrinsic value and not merely the means by which the ends of others—kings or priests or slave masters—are achieved,

[80]Westermarck, E., *The History of Human Marriage*, vol. 3, p. 372.

or else by which some impersonal and fantastic purpose, the 'glory' of the tribe or even of God, is supposed to be served. It means that caste is absent; that accidental or extrinsic differences count for less; that opportunity is widened. It means, therefore, that women are less disqualified because of sex; that the poor are less dishonored and disfranchised because of poverty and the alien less despised because of his origin. It means that life and health are more esteemed and guarded. It means that men are less enslaved by the primary necessities and so are able to pursue the wider and higher interests, which reveal themselves as the former grow less insistent.....The likeness of all men will be the basis of order, while their differences will be suffered to express themselves, in so far as they are not clearly anti-social, and to contribute to the whole that unique element of worth which resides in free personality, the origin of all permanent gains of civilization."[31]

[31]MacIver, R., *Elements of Social Science*, pp. 123-4.

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APPENDIX

The New Marriage Law

The Marriage Act of June 11, 1920

CHAPTER I.

Betrothal

Par. 1. Betrothal exists when a man and a woman, in the presence of witnesses, by exchanging rings, or otherwise, have signified their decision to enter matrimony.

Par. 2. If one of the betrothed dies, the survivor may claim the gifts given the deceased in view of the marriage and yet keep the gifts he himself has received.

If the betrothal is dissolved, both may demand the return of their respective gifts. This right does not exist for the one, who is principally the cause of the dissolution.

Par. 3. If children are conceived during the betrothal and this betrothal later dissolved principally due to the fault of the man, he must pay the woman reasonable damages. Such damages may be ordered paid in a lump sum or in installments.

If, for any other reason, one of the betrothed is principally to blame for the dissolution of the betrothal, the other may be adjudged damages only to the extent of expenses incurred as a result of actions taken in view of the intended marriage.

Par. 4. He, who according to Chapter 2, paragraphs 2 or 3, is forbidden to marry without the consent of parent or guardian, need not pay damages as stated in the second section of paragraph 3, unless he had such consent to the betrothal.

If the man, in cases referred to in section one, paragraph 3, was under eighteen years of age at the time the child was conceived, he is not more liable for damages than if no conception had occurred.

Par. 5. If any one wishes to press claims on the basis of paragraphs 2 and 3, such claims must be brought within a year from the time the betrothal was dissolved. If a year is allowed to elapse, the right to recover damages is lost.

Par. 6. If children are conceived during the betrothal or if the parents become betrothed after the conception and such betrothal is dissolved through the death of the man; and, if the woman is in need of support, she may receive a reasonable part, though not more than half, of his property, if she makes her claim before the administrator of the estate, the court, or the judge within six months after his death.

CHAPTER 2.

Impediments

Par. 1. A man under twenty-one years of age and a woman under eighteen can not marry without the permission of the King.

Par. 2. No one under twenty-one years of age, who has not been previously married, can marry without the consent of parents.

If one of the parents is dead, insane, feebleminded, or without share

in the guardianship; or, if word can not be had from one of them without great delay or in a roundabout manner, the consent of the other is sufficient. If the above conditions exist in regard to both parents, the betrothed shall ask the consent of his guardian, or, where a special guardian has not been appointed, of some one appointed by the court upon application.

Par. 3. No one, for whom a guardian has been appointed, can marry without his guardian's consent.

Par. 4. If consent is denied in cases mentioned in paragraphs 2 and 3, the court may upon application permit the marriage, if it finds that there was no reason for the denial.

Par. 5. An insane or feebleminded person cannot marry.

Par. 6. A person suffering from epilepsy, which is mainly due to internal causes, or venereal disease, which is in an infectious stage, can not marry unless the King finds reason to permit the marriage.

Par. 7. Marriage is forbidden between persons in lineal descent or ascent and between brother and sister.

Par. 8. Marriage between uncle and niece and aunt and nephew can not take place without the King's permission.

Par. 9. Marriage is forbidden between persons, one of whom has been married to the other's relative in directly ascending or descending line.

Par. 10. No one can remarry, while an earlier marriage is undissolved.

Par. 11. A woman, who has been married, can not remarry within ten months from the dissolution of her earlier marriage, unless it is proved that she is not pregnant from the period before the dissolution, or that ten months have passed, since she cohabited with her husband.

Par. 12. An adopted child and its adoptive parent can not marry, while the adoptive relationship exists.

CHAPTER 3.

Publication of Banns

Par. 1. Banns shall be published in the Swedish congregation where the woman is registered, or, if she neither is nor should be registered there, where she resides.

Both betrothed shall apply for publication to the minister in charge of the parish records.

Par. 2. *Sect.* 1. When the man applies for publication, he shall, if he is registered in some other Swedish parish than the one mentioned in paragraph 1, bring a transcript of his parish record showing his qualifications for the marriage.

In case a betrothed neither is nor should be registered in a Swedish parish, he shall present a corresponding certificate from foreign registry.

Sect. 2. If the parish record or the above mentioned transcript does not give the age of the betrothed, he shall present other evidence in this respect. If he is under age, he must prove that the King's permission has been given in accordance with Chapter 2, paragraph 1.

Sect. 3. If a betrothed, according to Chapter 2, paragraphs 2 and 3, is not allowed to marry without the consent of parents or other guardian, he must show that such consent has been given or that the court has given permission to the marriage, according to Chapter 2, paragraph 4.

Sect. 4. If there is reason to believe that the betrothed is insane, or feebleminded; or, if the betrothed has been insane within the last three

years, he shall show a medical certificate that he is not insane or feeble-minded.

Sect. 5. If a betrothed is known as an epileptic, he shall present a medical certificate showing that he is not afflicted with epilepsy mainly due to internal causes. Otherwise he shall present an affidavit that he is not afflicted with epilepsy, as far as he knows.

Each betrothed shall also present an affidavit that he is not suffering from venereal disease in an infectious stage, as far as he knows.

The above rules do not apply if the betrothed presents a Royal permission to marry, regardless of afflictions.

Sect. 6. Both betrothed shall present affidavits that, as far as they know, they are not related directly or by marriage, as stated in Chapter 2, paragraphs 2 or 9, and that, unless permission to the marriage is presented according to Chapter 2, paragraph 8, no relationship of this latter kind exists, as far as they know.

Sect. 7. Each betrothed must by affidavit show whether or not he has been previously married.

If a betrothed has been married and the parish records or the transcript mentioned in section 1 do not show that the marriage has been dissolved by the death of the spouse or otherwise, he shall present proof to that effect.

Sect. 8. If the woman has been married and the parish record or the transcript mentioned in section 1 do not indicate that an impediment of the nature stated in Chapter 2, paragraph 11 does not exist, she shall present proof to that effect.

Par. 3. If the betrothed have complied with paragraph 2 and the minister does not find any impediment to the marriage, he shall immediately issue a notice of publication indicating the full names of the betrothed, their work and residence, and take care that the banns are published in church three Sundays in succession.

After publication, the man or the woman can not be granted publication for another marriage until four months have passed from the day of the last publication, unless one of the betrothed has died.

Par. 4. If any one believes that an impediment to the marriage exists, a report, supported by evidence, should be made to the minister.

Par. 5. If the publication has been completed and if no impediment to the marriage has been reported to the minister and proved to him according to paragraph 4, or in some other way come to his knowledge, he shall give the betrothed, upon their application, a certificate that publication has been made and that no impediment to the marriage exists. (Certificate of publication).

Par. 6. If a betrothed is dangerously ill or if the man is called to arms against the enemy, marriage can take place without publication.

Par. 7. A transcript can not be issued to a betrothed unless the one he is to marry gives his approval.

He, who has issued a transcript, shall take care that a notice to that effect is read in church the following Sunday. This notice shall give the full names of the betrothed, their business and residence, in addition to information as to where impediments to the marriage can be reported.

If such notice has been read, a new transcript can not be issued until four months have passed since the reading or since the last day of publication, if banns have been published. If one of the betrothed has died this rule no longer applies.

Par. 8. More definite regulations regarding transcripts, certificates and affidavits, mentioned in this Chapter, will be made by the King.

CHAPTER 4.

The Ceremony

Par. 1. Marriage is entered into by means of civil or religious ceremony.

Par. 2. A religious ceremony may take place within the Swedish Church, if both betrothed are members thereof or if one is a member, the other belonging to some other Christian faith; within any other denomination, to the ministry of which the King has given the right to perform a religious ceremony, if both are members of that denomination, or, if the denomination is Christian, if one belongs to it and the other is a member of some other Christian faith.

The King may decree that a member of a foreign Evangelical Lutheran denomination shall be given the same right to a religious ceremony as a member of the Swedish Church.

Par. 3. For the celebration of the ceremony within the Swedish Church, the betrothed may choose any minister of the Church. No one, however, is duty bound to officiate except a minister of the congregation of which either betrothed is a member.

Within other denominations, the ceremony shall be performed by a duly authorized minister of the denomination.

Par. 4. Regardless of the eligibility of the betrothed for a religious ceremony, a civil ceremony can be used.

Par. 5. The following are authorized to perform the civil ceremony: in a town, the registered magistrates, or, where such are not found, the chairman of the city council; in the country, the public prosecutor of the county or, where the King permits it, a special functionary appointed for a definite district by the Governor.

The duty of an official to perform a civil ceremony does not depend on the fact that either of the betrothed is a resident of his district.

If the county prosecutor resides in a town, he may also perform marriages within that town, but he is not duty bound to do so unless one of the betrothed resides in his district.

Par. 6. If conditions mentioned in Chapter 3, paragraph 6, do not exist, the ceremony shall not be performed unless the publication of banns has been completed. Even then the celebrant may refuse to perform the ceremony, if he knows of an impediment to the marriage. Without a certificate of publication no one shall perform a marriage with the exception of the minister who has charge of the parish records of the parish where publication was made.

If the publication has been completed, but the ceremony has not been performed within four months, or within a year, if one or both betrothed belong to the nomadic Laplanders, the ceremony cannot be performed on the basis of this publication.

Par. 7. If the betrothed wish to marry without previous publication in accordance with Chapter 3, paragraph 6, and if the celebrant does not keep the parish records, it shall be the duty of the betrothed, who is registered in a Swedish parish, to present a transcript.

Before the ceremony is performed, the prerequisites to publication mentioned in Chapter 3, paragraphs 2 and 3, shall be met.

Par. 8. The ceremony shall be performed in the presence of relatives or other witnesses.

During the ceremony, at which both betrothed shall appear before the celebrant, the latter shall, upon their affirmative answer to his question, declare them husband and wife.

In other respects, the following is to be observed: for the ceremony within the Swedish Church, the instructions in the Manual of the Church shall be followed; for the ceremony within other denominations, their religious usages; and, for the civil ceremony, the rules given by the King.

The minister, who has performed the ceremony, shall immediately give the couple a marriage certificate. That which has taken place during the civil ceremony shall be entered in a special register, according to more definite rules given by the King.

Par. 9. A ceremony shall be invalid if not performed by an authorized minister or by proper civil official or if performed in a different manner from the one specified in paragraph 8, section two. A ceremony, however, shall not be considered invalid because of failure to comply with other sections of paragraph 8, because the celebrant has exceeded his authority, or because proper publication has not preceded the marriage.

CHAPTER 5.

General Rules Regarding the Legal Relations of Husband and Wife

Par. 1. Husband and wife owe each other faithfulness and assistance. They shall work together for the welfare of the family.

Par. 2. With money, by activity in the home, or otherwise, husband and wife are, each according to his ability, bound in duty to contribute to the maintenance of the family according to what may be considered fitting to their station of life. For this maintenance that which is required for the joint management of the home and for the education of the children, in addition to provisions for the personal needs of husband and wife, shall be considered.

Par. 3. If the contributions of a spouse, according to paragraph 2, are not sufficient to provide for his own needs besides the expenses he must meet for the maintenance of the family in accordance with the customary living conditions of the couple, the other spouse shall be duty bound to supply him with the necessary means in suitable amounts. A right to such contributions, however, cannot be exercised by a spouse, who has shown inability to handle money or who, for some other reason, should not handle the disbursements.

Par. 4. That which, in accordance with paragraphs 2 and 3, has been given by one spouse to the other for personal needs, is the latter's property.

Par. 5. If a spouse is guilty of open neglect in performing his duty to contribute to the support of the family, he shall, if the other demands it, be ordered by the court to advance contributions for expenses incurred in maintaining the family, the meeting of which has customarily devolved upon him or which the court finds should be entrusted to him, under the circumstances.

Par. 6. If one of the spouses has during the calendar year expended more for the proper maintenance of the family than he is responsible for, according to paragraph 2, he may, unless arrangements have been made or under the circumstances can be assumed to have been intended, obtain

compensation from the other for the amount of such expenses, which may be considered devolving upon the latter.

Suit for recovery cannot be brought later than one year after the calendar year.

Right to compensation can only be exercised by the one entitled to it, neither can compensation be demanded in case of the bankruptcy of the one liable for its payment.

Par. 7. If husband and wife live apart on account of dissension, it is nevertheless the duty of each to contribute to the other's support on the basis of grounds stated in paragraph 2. If, however, one of them is the chief cause of the rupture, the other is not duty bound to assist in his maintenance unless special reasons are found.

As to contributions to the support of children in cases referred to in the above section, the Law regarding Children in Marriage shall be followed.

Par. 8. In cases referred to in paragraph 7, a spouse may, in so far as it is found reasonable with respect to the living conditions of the spouses and other circumstances, be obliged to deliver, for the use of the other, chattels, which, when the separation occurred, was part of the household goods intended for the joint use of the couple or which constituted the tools of the other. If property belonging to a spouse has thus been turned over to the other for his use, an agreement, which the owner enters into with a third person regarding said property, shall not lead to a limitation of the right to its enjoyment by the other spouse.

Par. 9. In spite of what the court may have decided in regard to contributions mentioned in paragraphs 5 or 7, the court may change its ruling on the demand of either spouse, if essentially changed conditions demand it.

Par. 10. Agreements in questions referred to in paragraphs 2, 3, 7, or 8, may be adjusted on the demand of a spouse, if the agreement is found to be unreasonable or if essentially changed conditions demand it.

Par. 11. Husband and wife are duty bound to give each other the information regarding their financial circumstances, which is necessary for an estimate of their respective obligations of maintenance.

Par. 12. Either spouse may, for the daily maintenance of the household or the education of the children, with binding effect on the other, enter into transactions such as are customary for such purposes. Unless it is otherwise apparent from circumstances, these transactions shall be considered made for the purpose of binding both spouses.

The transaction mentioned is not binding for the other if the one with whom it was entered into knew or ought to have known that that which was procured through it was unnecessary.

The contents of this paragraph shall not apply if husband and wife live apart due to dissension.

Par. 13. If a spouse abuses the right mentioned in the preceding paragraph, he may be deprived of the right by the court, upon the petition of the other.

If changed conditions are proved to exist or if the spouses mutually agree, the court may revoke its decision.

The above decision by the court shall immediately be reported by the court to the Marriage Registry and a notice to that effect inserted in the general and local newspapers.

Par. 14. If one of the spouses, due to absence or illness, is unable to take care of his interests and has not named an agent, or if a guardian or

trustee has not been appointed for him, the other spouse may act for him, when an occasion arises, which can not without inconvenience be postponed. He may also collect the revenue from his estate and other income and, if it is absolutely necessary to procure means for the support of the family, pawn or sell property belonging to the other. Real estate may on no condition be mortgaged or sold unless the court permits it, upon having heard the opinions of the owner's nearest friends in the kingdom.

The above does not apply if husband and wife live apart due to dissension.

Par. 15. When the marriage is celebrated, the wife shall accept her husband's family name. She may use her own name and that of her husband combined, if she reports the matter in the manner prescribed by the King.

CHAPTER 6.

The Property of Husband and Wife

Par. 1. Each spouse has a property right in the property, which the other has at the time the marriage takes place and that which he later acquires, with the exception of property which is to be private as later provided. That property of a spouse, in which the other has a property right, is called his marital property.

As for a right which cannot be transferred or is otherwise of a personal nature, the rules as to marital property rights shall hold only in so far as they do not conflict with what the law holds in regard to said right.

Par. 2. A spouse may control his marital property with such limitations as are stated in paragraphs 3-6.

In case of divorce, separation of property, or separation, each spouse or his heirs shall take half of the remaining marital property, unless this law otherwise provides.

Par. 3. A spouse must manage his marital property in such manner that it does not unduly decrease to the detriment of the other.

Par. 4. A spouse may not dispose of or mortgage for debt real property, in which the other has a marital property right, unless the latter has consented thereto in writing and in the presence of two witnesses. If the latter is absent or under guardian, his guardian or trustee must give his consent. No special consent is necessary if the spouse who desires to enter into such a transaction is the other's guardian or trustee.

If a spouse has entered into a transaction as stated in the previous section without getting the consent necessary, the transaction is illegal, if it is protested by the other spouse, his guardian, or his trustee. This protest must be made within three months from the time he learned of the transaction and not later than a year from the time the conveyance or mortgage was recorded.

That which has been stated in this paragraph regarding real property shall also apply to town-leases. The provisions in section 2 as to the recording of a conveyance shall also apply to the registration of such lease.

Par. 5. A spouse may not without the other's consent dispose of or pawn chattels in which the latter has a marital property right and which form part of the household goods intended for the common use of the spouses, which constitute the work tools necessary for the latter, or which are designed for the personal use of the children. If the other is under guardian, it is nevertheless necessary for him to give his consent, as has

just been said, unless he is insane or feebleminded. If this is the case or if consent can not be had without considerable difficulty or loss of time such consent shall be regarded as unnecessary.

If a spouse has entered into a transaction of the nature mentioned in the first section without necessary consent and if the one with whom the transaction was made did not act in good faith, the transaction shall be invalid, if the other lodges a complaint within three months from the time he received knowledge of the transaction and not later than a year after the delivery of the goods.

Par. 6. If consent is refused in cases referred to in paragraphs 4 or 5, the court may permit the transaction upon petition, if it is found that no ground for the refusal exists.

Par. 7. If a spouse has intentionally killed the other, or if he, when some other committed the murder, had part in the crime as stated in the criminal law, chapter 3, paragraphs 1-6, he shall lose his marital property right in the property of the dead spouse.

Par. 8. Private property is:

property, which has been declared private by pre-nuptial or post-nuptial agreement;

property, which a spouse has received as a gift from some other person than his spouse, on condition that it remain private, or which he has received by will on such a condition, or which he has inherited, provided that the testator has by will imposed such a condition;

that which has been substituted for property mentioned above, unless other provisions have been made in the agreement which made the property private.

Income shall not, on account of agreements mentioned in this paragraph, be private, unless special provisions to that effect have been made in the agreement.

Par. 9. If husband and wife have made an inventory of property belonging to each of them and if this inventory is signed by them under oath and accompanied by affidavits by witnesses as to the genuineness of the signatures and the date thereof, this inventory shall, in case of dispute as to the ownership of property, be prima facie evidence unless it is proved or on account of special circumstances assumed that it is incorrect. Presumption of validity shall not, however, be granted the inventory in disputes arising in an execution, which takes place within a year from the date of the inventory, or in bankruptcy proceedings, which follow a petition made within that time.

CHAPTER 7.

The Debts of Husband and Wife

Par. 1. Each spouse shall with his private or marital property answer for debts contracted by him before or during the marriage.

Par. 2. If debts have been contracted during the marriage by the spouses jointly, they shall be held jointly liable unless other agreements have been made.

This provision shall also apply when one spouse has contracted debts for which the other spouse is also responsible, according to chapter 5, paragraph 12.

Par. 3. If the wife is jointly liable with her husband for a debt, which one or both of them have contracted by a transaction of the kind referred

to in chapter 5, paragraph 12, and if the creditor wants to sue the wife for the amount, he must start proceedings within two years from the day of payment, or, if the debt is to be paid on demand, from the day it was incurred. If this time elapses, the right to sue her is lost.

If the wife is adjudged bankrupt she is not in duty bound to satisfy a debt with property acquired during or after the bankruptcy, if the debt was made previous to the bankruptcy and is of the nature mentioned in section one.

Par. 4. When on account of separation of property, separation, or divorce, a division of property has taken place, the wife shall be responsible for debts, as mentioned in paragraph 3, which have been incurred before the petition for the separation of property, separation, or divorce, only to the value of the private property, which she owned, when said petition was made, the separation secured, or the marriage dissolved, and the property, which was given her at the division. If, as a result of the separation or the dissolution of the marriage, division of property is not to take place, the wife shall, after the separation or the dissolution of the marriage, be responsible for debt above mentioned only to the extent of the value of the property she possessed, when the separation was secured or the marriage was dissolved.

If property, mentioned in the above section, is subject to mortgage or is otherwise security for some debt not referred to above, a part of the value of the property, corresponding to the amount of the debt, shall be left out of consideration.

Par. 5. That which has been provided in paragraphs 3 and 4 shall not apply if the wife has accepted more extensive responsibility for payment.

CHAPTER 8.

Pre-nuptial and Other Legal Agreements Between Spouses

Par. 1. Betrothed or spouses may by means of pre-nuptial or post-nuptial agreements decide that property, which belongs to or becomes the property of one of them and which would normally be his marital property, shall be his private property. Through such agreements it may also be settled that property, which would otherwise be the private property of one of them, shall be his marital property, unless it is otherwise understood from chapter 6, paragraph 8, section 2.

Except as to what is above stated, no agreements between spouses shall deviate from the contents of this law regarding the property rights of spouses.

Par. 2. If one of the betrothed wishes to give the other property, which is to become the property of the latter at the time of the marriage, or if one spouse wishes to make such a gift to the other, an agreement must be drawn up. Such an agreement, however, shall be unnecessary, when it is a question of ordinary gifts, the value of which harmonizes with the giver's status in life.

A promise by a betrothed or a spouse to give the other money or other things during the marriage shall not be binding unless compensation is made, even though a written agreement is entered into.

Par. 3. A spouse, whose income during the calendar year has created a surplus, may, without agreement or compensation and before the expiration of the following year, give the other property not exceeding the value of half of the surplus mentioned. Such transfer, however, shall not be valid against creditors unless the giver had sufficient property left to

pay the debts and a written and duly witnessed document has been prepared, in which the amount of the surplus is stated.

Par. 4. If the spouses have, without drawing up an agreement, agreed between themselves as to the transfer of property, such an agreement can not protect a spouse against creditors, unless it can be shown or by circumstances inferred that the agreement was of a nature not requiring a written form to be valid.

Par. 5. If a gift has been made, as in paragraph 2, and if it is not of the nature mentioned in the second part of the first section of the paragraph mentioned, and if a debt, which the donor owed when this gift was made, in accordance with paragraph 12, cannot be paid by him, the other spouse shall contribute to its payment to the value of the transferred property, unless he can prove that the donor had enough property left at the time to satisfy his debt. If compensation has been made, its amount shall be subtracted from the value of the transferred property. If the latter has been entirely or partly lost due to no fault of the receiver, he shall be correspondingly relieved of responsibility.

If the donor has become bankrupt or has at the time of an execution been found incapable of paying his debts, or if he, being a merchant, has stopped payments, or if he is in other respects in such a precarious position that it may be feared that debts of the kind mentioned in the first section above cannot be paid in full, the other spouse shall be held responsible for the debts to the amount mentioned in the above section, even though the financial condition of the donor may not be ascertained.

If a suit is pending for the restitution of the gift to the donor's estate in bankruptcy, the responsibility of the recipient, according to this paragraph, shall not be asserted.

Par. 6. If one spouse aids the other in the latter's business, he shall, even if no agreement as to compensation has been entered into, receive a reasonable pay for his labor, if it, in consideration of the nature of the work and other circumstances, shall be deemed just that compensation should be made.

If a claim for the compensation of such labor has not been made before the end of the calendar year following that during which the work was performed, the right to claim compensation shall be forfeited, unless there is an agreement to the contrary.

Par. 7. If the property of a spouse has been given to the other for management and if the spouses have agreed, or if the circumstances indicate that their intentions were, that the manager should have the right to use the income thereof for the support of the family, the latter's word shall, in case of disagreement as to the amount used for that purpose, be taken unless circumstances indicate differently.

If a spouse who has entrusted property to the other for management has agreed to relinquish his right to withdraw this property at his pleasure, such agreement shall not be binding.

Par. 8. Agreements concerning the duty of a spouse to support the other, certain agreements concerning impending separation or dissolution of the marriage, and agreements concerning separation of property or anything connected therewith, are dealt with in chapters 5, 11, and 13.

Par. 9. Although still a minor, a betrothed or a spouse may make pre- or post-nuptial agreements. He should, however, get the consent of his guardian, unless it concerns the transfer of property, which he himself controls.

The same shall be true of transfer of the nature referred to in paragraph 3. What said paragraph rules as to conditions making the transfer

valid against creditors, shall also apply to the consent of the guardian as to the transfer.

Par. 10. Pre-nuptial or post-nuptial agreements shall be drawn up in written form by the spouses or the betrothed and shall be duly attested by witnesses. If the consent of the guardian is necessary, it shall be given as hereinbefore provided.

Par. 11. Such agreements shall be filed in the court in the place, where the husband should answer in suits against his person, or, if the husband is not duty bound to answer in such suits before a Swedish court, to the court before which his wife should answer in such suits. If no court of the nature stated exists, the agreement shall be filed in the Magistrate's Court in Stockholm.

The court shall enter the agreement in its minutes and shall immediately send a copy thereof to the authority in charge of the Marriage registry together with information of the date the agreement was filed in the court. In cases referred to in paragraph 2, a notice of the filing shall also be published in the local and general newspapers.

If the agreement does not contain complete information regarding the names, occupations, and residence of the spouses, the court shall call for such information and send it to the registry mentioned.

If a certified copy of the agreement is not filed in the court, the court shall, at the expense of the applicant, prepare such a copy.

Par. 12. If a prenuptial agreement has been made by the betrothed, it shall be valid from the day of the wedding, if it is filed in the court within a month, if in the city, or to the session following the month of the wedding at the latest, if in the country. In other cases the agreement shall be valid from the date of its filing in the court.

CHAPTER 9.

The Separation of Property

Par. 1. Upon application, a spouse may gain separation of the property

1. if the other, through mismanagement of his financial affairs, through abuse of his right to control his marital property, or through other improper conduct causes a material decrease in his marital property or causes a danger of such decrease, and

2. if the property of the other spouse has been surrendered to creditors.

Par. 2. Husband and wife can also gain separation of property upon mutual agreement.

Par. 3. All property acquired by a spouse after the petition for separation of the property has been made, shall be his private property, if his petition is granted.

Par. 4. When separation of the property has been granted, a division of the property shall take place and all property falling to the share of a spouse shall thereafter be his private property.

Par. 5. Until the division of the property takes place, each spouse may, unless it is otherwise arranged according to paragraph 6, continue to manage the marital property, which belonged to him when the petition for separation was made. When the division takes place, the spouse shall be in duty bound to render an accounting of his management of this property and of the income accruing from it.

Par. 6. If separation of property has been applied for and if, when the petition has been made by one spouse alone, sufficient cause is shown,

marital property, which the other may according to paragraph 5 control, shall, upon the petition of the former and if it is found necessary for the protection of his interests, to the value of what would be deemed the petitioner's share at the division of the property, be placed under special management until the petition for the separation of the property has been heard and, if it is granted, the property has been divided, or until the said petition has been refused. Such withdrawal shall, however, not be made if the other spouse objects and gives security, approved by the court, for the share, which would fall to the petitioner at the division. If separation of property has been granted, either spouse may, according to what has just been said, demand that that marital property, which the other manages, be placed under special administration until the division has been made.

When the above arrangement is made, more definite rules may also be given regarding the use of the property or its income for the support of the family or for other necessary expenses.

Par. 7. Marital property, which a spouse, according to paragraph 5, has a right to cotnrol, may without hindrance from a pending petition for the separation of property or a court decree of such separation, be seized in payment for debts. If such property, according to paragraph 6, is placed under a special administrator, it shall not be seized unless the other spouse is jointly liable for the debt or unless the property, due to mortgage or other reason, is security for its payment.

Par. 8. If the property of a spouse is surrendered to his creditors before the division takes place, or if such division has been annulled on account of the bankruptcy of a spouse, the marital property, which a spouse has the right to control, according to paragraph 5, shall be managed by the receiver until, by division of the property, it is decided how much shall fall to the share of the spouse. If it is found necessary, the receiver may sell the property without hindrance.

In the case of bankruptcy, the rules in paragraph 6 are inapplicable.

Par. 9. If during the suit for separation of property no inventory has been made of the husband's and the wife's assets and liabilities as they existed at the time the petition for separation of property was made, such an inventory shall be prepared when the separation has been granted. This inventory shall be signed by the spouses under oath and a copy filed in the court or presented to the judge.

If a copy of the inventory has not been filed within three months of the date the separation of property was decreed, the court or the judge shall appoint a magistrate, a sheriff, a tipstaff, or some other suitable person to make the inventory, in which case the spouse is required under oath to give honest information concerning his assets and liabilities. The appraiser must send a copy of the inventory to the court or to the judge.

If separation of property has been applied for and if, in case the petition has been made by one spouse alone, sufficient cause is shown, the court or the judge shall, upon the petition of a spouse, order an inventory to be made in accordance with what has been previously stated in this paragraph. The appraiser shall present to both husband and wife copies of the inventory and shall also send a copy to the court or to the judge together with information as to the date when he presented the copies to the spouses.

A spouse must, before the court and by oath, confirm the accuracy of the inventory, if the other demands it, or if the demand is made by a creditor, whose claim antedates the division of the property.

CHAPTER 10.

The Annulment of the Marriage

Par. 1. If a marriage has been entered into in spite of impediments mentioned in chapter 2, paragraphs 7, 9, or 10, an annulment shall be decreed.

For impediments, mentioned in chapter 2, paragraph 10, no annulment shall be decreed, if the earlier marriage has been dissolved before a petition for annulment was made.

It is the duty of the public prosecutor to demand the annulment of a marriage. Either spouse, as well as the earlier spouse of the one who remarried, may institute proceedings for annulment in case of impediment mentioned in chapter 2, paragraph 10.

Par. 2. If a spouse was, at the time of the marriage, insane or feebleminded, the marriage may be annulled on his petition. If he has not made his petition within six months from the time his illness was cured, his right shall be forfeited.

If the other did not, at the time of the wedding, know of the insanity or the feeblemindedness, he too may secure annulment, if he petitions for it within six months from the date he learned of it and not later than three years after the marriage. Annulment on the ground of insanity can not be pleaded, when the illness has been cured.

Par. 3. A marriage can also be annulled upon the petition of a spouse,

1. if he, at the time of the marriage, was momentarily out of his mind or in some other condition which precluded the possibility of legal responsibility;

2. if he by mistake was married to some other person than his betrothed or did not desire to enter into marriage;

3. if unknown to him the other was, at the time of the marriage, suffering from epilepsy, mainly traceable to internal causes, venereal disease in an infectious stage, or leprosy, or was incurably disabled for marriage;

4. if he was deceived into marriage by false statements or fraudulent concealment by the other as to his identity or such circumstances affecting his earlier life, which would have been reasonably certain to deter the former from entering into the marriage.

5. if he was forced into the marriage.

Annulment can not be secured, unless the spouse petitions for it within six months from the time the condition mentioned in 1 ceased or he received knowledge of the reasons for annulment mentioned in 2, 3, or 4, or became free from the compulsion referred to in 5. No petition for annulment shall be considered if made more than three years after the marriage.

Petition for annulment may not be made on the ground of venereal disease, if the spouse has not been infected or if the disease is no longer in the infectious stage, or on the ground of some other illness, after it has been cured.

Par. 4. The effects of an annulment shall be the same as those prescribed in case of divorce, unless it is hereinafter otherwise provided.

What has been stated in chapter 11, paragraph 20, for cases under consideration there, as to the preparation of an inventory of the assets and liabilities of each spouse and the confirmation by oath of such inventory, shall have corresponding application, when a suit for annulment is pending or when an annulment has been decreed.

Par. 5. When a marriage has been annulled, property, which a spouse had at the time of the marriage or has acquired later through inheritance,

gift, or will, shall be considered as his private property, when a division of the property is made.

Par. 6. If annulment takes place in accordance with paragraph one and it appears that one but not the other of the spouses was acting in good faith, the former shall have the right to damages, in accordance with what is proved reasonable considering the financial and other circumstances of the two.

If a spouse secures annulment according to paragraph 2, section 1, or paragraph 3, and if the circumstance leading to the annulment was, at the time of the marriage, known to the other, the one on whose petition the marriage is annulled, has a right to damages as has just been mentioned.

Damages may be ordered paid in a lump sum or in installments.

A demand for damages shall, on pain of forfeiture of same, be made in the suit for annulment, unless it is merely a question of the adjustment of an agreement, which the spouses may have entered into in view of the annulment.

Par. 7. After the annulment the spouses are no longer in duty bound to support each other.

Par. 8. If a marriage is annulled according to paragraph one and the husband at the time of the marriage acted in good faith, but not the wife, or if the husband secures annulment according to paragraph 2, section one, or paragraph 3, and if the circumstance leading to the annulment was known to the wife at the time of the marriage, she shall, if the man so asks, be forbidden the future use of his name.

Par. 9. If, by the death of a spouse, a marriage is dissolved, which should have been annulled according to paragraph one, the marital property shall be divided as if an annulment had taken place, if the demand is made not later than at the division of the property.

The same holds if a marriage, which could be annulled according to paragraphs 2 or 3, is dissolved by death and the application of rules just mentioned is asked for by the surviving spouse, if he had a right to the annulment, or by some other part owner of the estate, if the deceased had such a right and had instituted proceedings for annulment or was until his death in the condition mentioned in paragraph 2 or in paragraph 3, section 1.

Par. 10. A surviving spouse, who at the time of the other's death, had a right to annulment, may receive damages according to regulations in paragraph 6 if he demands it before or at the division of the property.

Par. 11. If a marriage should have been annulled because of impediment mentioned in chapter 2, paragraph 10, and the remarried one dies, right to compensation, pension, or other financial privilege, which is given to the surviving spouse, shall be regarded as belonging to the spouse of the earlier marriage, unless it otherwise appears from the circumstances.

CHAPTER 11.

Separation and Divorce

Par. 1. Husband and wife, who, on account of deep and constant discord, are unable to continue their marital existence, may secure a court order for separation upon mutual agreement.

Par. 2. If a spouse is guilty of flagrant neglect of his duty to support the other and the children, or if he otherwise ignores his duties toward them in a palpable manner, or if he is addicted to the misuse of intoxicants or is leading a vicious life, the other may secure separation, unless

with regard to the latter's own behavior or other special circumstances it can be required that he continue the relationship.

If due to a difference in temperament and ideas or to other reasons, a deep and lasting discord has arisen between the spouses, and if one of them desires separation, he shall be entitled to it unless, with regard to his own conduct or other special circumstances it can be reasonably required that he continue the relationship.

Par. 3. If the spouses, after having secured separation, have lived apart for a year and their marital relationship is not resumed, a decree of divorce can be issued upon the petition of either spouse.

Par. 4. If husband and wife, without decree of separation, on account of discord have lived apart for three years, either may receive divorce. If only one of them desires it and, on account of his conduct or other special circumstances it is found that the marriage should not be dissolved upon his petition, a decree shall not be granted.

Par. 5. If a spouse has wilfully and for no valid reason withdrawn from the marital relationship for two years and has not resumed it, the other has a ground for divorce.

Par. 6. If a spouse is absent and it is not known that he has been alive for the last three years, the other may receive a divorce.

Par. 7. If a spouse, contrary to chapter 2, paragraph 10, has remarried, the other may receive a divorce, if he petitions for it within six months from the date he learned of the new marriage.

Par. 8. If a spouse commits adultery or other punishable fornication, the other has a right to a divorce unless he had part in the deed or gave his consent to it. He must institute proceedings, however, within six months from the date he learned of the deed and not later than three years from its occurrence or his right to so plead is forfeited.

Par. 9. If a spouse, who is suffering from venereal disease in an infectious stage and knows or suspects his condition, has through cohabitation exposed the other to infection, the latter has a right to divorce unless he permitted the exposure with knowledge of the danger. No petition for divorce shall be granted, however, unless made within six months from the date the petitioner learned that he had been exposed to the danger of infection, nor shall it be granted if infection did not result and the disease is no longer in an infectious stage when the petition is made.

Par. 10. If a spouse plots against the other's life or subjects him to severe physical maltreatment, the latter has a right to a divorce, if he petitions for it within six months from the date he learned of the matter and not later than three years after its occurrence.

Par. 11. If a spouse is sentenced to hard labor for three years or to some more severe punishment, the other has a right to divorce.

If a spouse is sentenced to hard labor for a definite period shorter than three years or to prison or workhouse for at least one year, and the other asks for divorce, the court shall investigate whether or not a divorce should be granted, considering the prisoner's faults. This rule shall also hold in cases where a foreign court has imposed a one-year prison sentence on a spouse, as a result of which the other desires a divorce.

A sentence for crime shall not constitute a ground for divorce for a petitioner who consented to the crime or acted as an accomplice.

If a spouse desires a divorce on grounds mentioned in this paragraph, the petition must be made within six months after learning of the sentence and not later than three years from the date the sentence was imposed.

Par. 12. If a spouse is an immoderate user of intoxicants, the other may get a divorce if the court finds special reasons to grant it.

Par. 13. If a spouse is insane and the insanity has been continuous

for three years of the marital life and there is no hope for permanent recovery, the other may be given a divorce.

Par. 14. All property acquired by a spouse after separation has been granted is his private property.

Par. 15. When separation has been decreed, division of the property shall take place and whatever property is then given to a spouse becomes his private property.

Par. 16. Until a division of the property is made, each spouse may, unless otherwise stated in paragraph 17, continue to control the marital property he owned when the separation was granted. When the division is made, he shall be in duty bound to render an accounting of his management of this property and the income which it has yielded.

Par. 17. If either spouse requests it and it is found necessary for the protection of his rights, marital property, which the other according to paragraph 16 has the right to control, shall, to the value corresponding to what is expected that the division of the property shall yield the petitioner, be placed under special management until the division has been made. This segregation shall not take place if the other objects and gives security, approved by the court, for such property, as may fall to the petitioner at the time of the division.

When the above arrangement is made, more definite rules shall be given for the use of the property and its income for the support of the family or for other necessary expenses.

Par. 18. Marital property, which a spouse, according to paragraph 16, has a right to control, may, without hindrance from a separation decree, be seized for his debt. If such property is, according to paragraph 17, placed under special management, it may not, however, be thus seized unless the other spouse is jointly liable for the payment of the debt or the property specially secures the payment of the debt, due to mortgage or other reason.

Par. 19. If the property of a spouse is surrendered in bankruptcy before the division of the estate is made, or if the division has been annulled due to bankruptcy proceedings against the spouse, the marital property which, according to paragraph 16, may be controlled by the other, shall be managed by the receiver in the bankruptcy proceedings until, at the division of the property, it is decided what is to fall to his share. If it is found necessary, the receiver may sell the property without hindrance.

If bankruptcy proceedings are instituted, disposition of the property, according to paragraph 17, shall be nullified.

Par. 20. If during the separation proceedings no inventory has been made of the assets and liabilities of the spouses, such an inventory shall be prepared after the separation has been decreed. It shall be signed under oath by both spouses and a copy thereof given to the court or to the judge.

If this copy has not been filed within three months from the date of the separation decree, the court or the judge shall appoint a magistrate, sheriff, tipstaff, or other suitable person to make the inventory, in which case the spouses are required under oath to give honest information as to assets and liabilities. The appraiser shall send a copy of the inventory to the court or the judge.

If a petition for separation has been made and if, in case the petition is made by the spouse alone, it can be reasonably supported, the court or the judge may, upon the petition of one of the spouses, order an inventory made, according to provisions made earlier in this paragraph. The appraiser shall send a copy of the inventory to the court or to the judge.

The spouse must under oath attest the accuracy of the inventory be-

fore the court, if the other demands it or if the demand is made by a creditor whose claim antedates the division of the estate.

Par. 21. The provisions of paragraphs 15-20 shall not hold if neither spouse has any marital property due to separation of the property or to pre-nuptial or post-nuptial agreements.

Par. 22. If a spouse gains separation according to paragraph 2, section one, and if the property due him at the division of the estate is slight, the court may, on his petition, authorize him to remove from the marital property, when the division is made, necessary household goods as well as tools and other chattels, which are needed for the continued pursuit of his occupation, even if by so doing the other's share may suffer shortage. What is here provided shall not be construed as encroaching upon the rights, which are due each spouse according to chapter 13, paragraph 4.

Par. 23. The provisions of paragraphs 15-20 as to cases where the spouses have gained separation or where a petition for separation has been made, shall have corresponding application when divorce has been decreed or a petition for divorce made, unless the spouses have no marital property due to pre-nuptial or post-nuptial agreements, separation of property, or separation.

If a spouse gains separation on account of circumstances, which involve great wrongs inflicted by the other or on the ground of the latter's misuse of intoxicants, the provisions of paragraph 22 shall be correspondingly applied.

Par. 24. If divorce is granted due to actions of a spouse by which he has seriously wronged the other, or after separation, obtained on the ground that a spouse has seriously neglected his duties toward the other, the latter shall be awarded reasonable damages in line with the financial condition of the spouses and other circumstances.

Damages may be ordered paid in a lump sum or in installments.

If demands for damages are not made during the divorce proceedings, the right to claim the same shall be forfeited unless it is merely a question of adjusting an agreement between the spouses entered into in view of the divorce.

Par. 25. Even though divorce has been granted, it is incumbent upon a spouse to contribute to the other's support, on grounds stated in chapter 5, paragraph 2. But if one of them is chiefly responsible for the divorce, the other shall not be in duty bound to give him support unless special circumstances demand it.

Par. 26. If a divorce has been granted and one of the spouses is later found to be in need of the necessities of life, the court may order the other to contribute to the former's support, according to his ability and other circumstances to be considered. Such contributory support shall not, however, be granted a spouse who was the chief cause of the divorce. If the financial and other circumstances of the one responsible for the support warrant it, the contribution may be set at a definite amount, which shall be paid by him at once. If the contribution is ordered paid at definite intervals and the one entitled to it enters into a new marriage, no further payment need be made.

The demand for contributory support for a divorced spouse shall be made in the divorce suit, or the right to claim same shall be forfeited, unless it is merely a question of adjusting agreements between the spouses made with reference to the divorce.

Par. 27. In suits for divorce or separation, the duty of the court to decide which spouse shall be given the care of the children and how the contributions to their support shall be made is governed by the Law of Children in Marriage.

Par. 28. Without hindrance of what a court has previously decided in regard to contributive support for a spouse, the court may, on the petition of either spouse, revise the arrangements if circumstances demand it. Contributive support for a divorced spouse shall, however, not be granted by the court, if the petition has once been refused, nor shall it be raised above a previously settled amount.*

The provisions of this paragraph shall not be applied if a spouse has been obliged to pay at one time a definite amount for the support of his divorced spouse.

Par. 29. If an agreement, which the spouses, in anticipation of the divorce or the separation, have entered into in regard to separation of property or anything connected therewith, damages, or contribution to the support of a spouse, is patently unjust to one of them, it may, unless made during the separation, be adjusted by the court on the petition of the injured spouse. On pain of forfeiting the right to claim, such petition shall be made before or in the divorce suit, if divorce is granted in accordance with paragraph 3, but otherwise within a year from the date of the divorce decree.

Par. 30. If spouses, who have won separation, cohabit together again, the effect of the separation is lost, except as to matters discussed in paragraphs 14-20.

Par. 31. After divorce, a wife may retain her husband's name or take her maiden name.

CHAPTER 12.

Certain Provisions with Reference to the Dissolution of a Marriage through the Death of a Spouse

Par. 1. Upon the death of a spouse the property shall be divided unless neither spouse has marital property due to pre- or post-nuptial agreement, separation of property, or separation.

Par. 2. Unless the surviving spouse and the heirs of the deceased agree to the division of the property or the property of the deceased has been surrendered to the creditors, no division shall be made until all known debts of the deceased have been paid or means for their payment have been placed under a special administrator.

Par. 3. Until the division of the property is made, the administration of the estate of the deceased shall be in the hands of the surviving spouse and the heirs of the deceased jointly, subject to what has been specially provided with reference to this administration.

Par. 4. Unless it is otherwise provided in paragraph 5, the surviving spouse may control the marital property which belonged to him at the other's death. When the division is made, he shall be in duty bound to give an accounting of his management of this property and the income it has yielded.

Par. 5. If the heirs of the deceased demand it and it is found necessary for the protection of their rights, marital property, which the surviving spouse may control according to paragraph 4, shall, to the value of the amount of such property which might be assumed to fall to the heirs at the division, be placed under special management until the division has been made. This shall not be done if the surviving spouse enters a protest and gives security, approved by the court, for the amount of the property, which should fall to the heirs at the division.

*This last provision refers to condition in paragraph 26, when support has been granted once for all and paid in a lump sum.

When the above arrangement is made, more definite provisions may also be made regarding the use of the property or its income for the support of the children and the surviving spouse or for other necessary expenses.

Par. 6. Marital property, which a surviving spouse may control according to paragraph 4, may be seized for his debts regardless of the death of the other spouse. If such property has, according to paragraph 5, been placed under special management, it shall not be seized for debts owed by the surviving spouse unless the deceased was jointly liable with him for the debt or the property was security for the payment of the debt by means of a mortgage or otherwise.

Par. 7. If, before the division is made, the property of either spouse has been surrendered in bankruptcy or if the division has been annulled because of bankruptcy, marital property, which at the time of the death belonged to the debtor spouse, shall be managed by the receiver, until the division of the property has shown what shall be given to the estate in bankruptcy. If it is found necessary, the receiver may sell the property.

The arrangement mentioned in paragraph 5 shall, in case of bankruptcy, be null and void.

CHAPTER 13.

The Division of the Property

Par. 1. Division of the property, which must take place as a result of separation of property, annulment of the marriage, separation, divorce, or the death of one spouse, shall be made in the manner prescribed in the Law of Inheritance regarding the Division of Inheritance, and also subject to the provisions of this chapter.

The provisions of this chapter with reference to a spouse, shall, in case he is dead, be applied to his heirs, unless otherwise stated.

Par. 2. If a spouse owes a debt, which was incurred before the petition for separation of property was made, before the annulment of the marriage, the separation, or the divorce was decreed, or, if division is made as a result of the death of a spouse, before said death, property shall be taken from the marital property of the debtor spouse and given to the other for the payment of the debt or for the payment of that share in the debt, which has fallen to him, in case the debt was jointly owed by the spouses.

If the debt was made before the marriage and was, at the time of the marriage, secured by mortgage or in some other way by private property or property referred to in chapter 6, paragraph 1, section 2, which property does not enter into the division; or, if a spouse has during the marriage incurred the debt due to mismanagement of his economic affairs or due to other improper conduct or for the increase or gain of property of the nature just mentioned, the allotment mentioned in section one of this paragraph shall be made only for that part of the debt, which cannot be satisfied with such property.

Par. 3. When an allotment for debt has been made, according to paragraph 2, the remainder of the marital property of the spouses shall be equally divided between them, unless it is otherwise understood from chapter 6, paragraph 7; chapter 7, paragraphs 5 or 9; chapter 11, paragraph 22 or paragraph 23, section two; or, this chapter, paragraphs 4-12.

Par. 4. Each spouse or, if one is dead, the survivor may have exempted from the division belongings, such as clothing and other things which are exclusively for his own personal use. This exempted property

must not be greater in value than may be considered reasonable considering the status in life of the spouses.

Par. 5. If a spouse has been given marital property to satisfy a debt, as mentioned in paragraph 2, section 2, the other may receive compensation for it out of their marital property.

Par. 6. If a spouse has by mismanagement of his economic affairs, by abusing his right to control his marital property, or by other improper conduct caused a considerable decrease in such property, the other may receive compensation out of his marital property. If this does not suffice and if the one responsible for the compensation has private property, compensation for half of the balance shall be made out of such private property not needed for the satisfaction of debts.

Par. 7. A spouse shall also have a right to compensation, as mentioned in paragraph 6, if the other has used his marital property for the gain or the increase of his own private property or of property referred to in chapter 6, paragraph one, section one, neither of which is affected by a division, or for the payment of debts incurred before the marriage and of the nature mentioned in paragraph 2, section two.

Par. 8. A spouse, who has used his private property to increase his marital property, may receive compensation out of the latter.

Par. 9. If compensation due a spouse can not be paid in full, he can not demand the balance from the other.

Par. 10. Damages which, according to chapter 10, paragraphs 6 or 10 or chapter 11, paragraph 24, are due a spouse shall, if the payment is past due, be paid at the division of the property out of the other's share over and above the property needed to pay debts encumbering it. The same rule shall hold in case of past due contributions for support, which shall be paid by a spouse to the other at one time, according to chapter 11, paragraph 26.

Par. 11. If the spouses are jointly liable for a debt of the nature referred to in paragraph 2, each may demand that the other pay the part of the debt which falls to his share, unless security for its payment is given. If that is not done and if the one, who demanded it, desires it and gives security for the payment of the debt, property to satisfy that part of the debt shall, at the division of the estate, be allotted to him from the other's share over and above property needed to satisfy other debts. In such case, the former shall be alone liable for the payment of the debt in question.

Par. 12. If division of the property occurs as a result of the death of a spouse and the property falling to the lot of the survivor is slight, he may withdraw, from the marital property of the spouses, necessary household goods, tools, and chattels needed for the pursuit of his occupation. This he can do, even though the share of the heirs may suffer a decrease thereby.

Par. 13. When the division is made, each spouse or, if one is dead, the survivor has the right to receive in his share the work tools and other chattels needed for the pursuit of his occupation. In addition, each spouse is entitled to receive in his share whatever property he desires, if this property is part of his marital property. Real estate belonging to the marital property of a spouse, as well as other property belonging to his marital property, shall be given to him if he so desires. This may be done even though the property may exceed in value the share due him as long as he substitutes for it money to complete the other's share.

If the private property of a spouse is to be used to pay compensation, as stated in paragraphs 6 or 7, the compensation shall be paid in property which the payer may designate.

The right mentioned in the last part of section one shall not, if a spouse is dead, belong to any one but direct heirs and even so only with reference to real estate which the deceased has acquired from a relative in lineal ascent or descent or from the estate of a deceased relative in lineal ascent or descent.

Par. 14. If, at the division of the property, a spouse has relinquished what would fall to his share, according to this chapter, and cannot pay a debt incurred before the division, the other shall be liable for its payment to the amount of the surplus he has received unless he can prove that the debtor spouse had enough property left after the division to satisfy his debt. If the spouse, who relinquished his right, has been declared bankrupt or has, in an execution, been found to lack funds to pay his debt; or, if he, being a merchant, has stopped payments; or, if he is found to be in such a precarious position that it may be assumed that a debt of the nature mentioned in the first sentence will not be paid, the other spouse shall be liable for the debt to the value mentioned in that sentence, even though the former's condition is not clearly ascertained.

If division of the property has been made between a spouse and the other's heirs and if the latter have received too much, they shall be jointly responsible for repayment, as explained in the previous section.

The provisions of this paragraph shall not be applied with reference to debts for which the deceased spouse was liable, if division takes place following his death.

Par. 15. When division of property has been made, the spouse shall present to the court the document prepared. A report of the matter, with the date of the presentation shall also be made immediately to the Marriage Registry and a notice inserted in the general and local newspapers. If a spouse has, at the division of the property, relinquished his rights to an extra-ordinary degree and if his property is surrendered to his creditors as a result of a petition made within a year from the presentation of the document above mentioned to the court, the division shall be annulled in accordance with the Bankruptcy Law, if the creditors demand it.

The provision in the second part of the above section shall not apply, when a spouse is dead and the relinquishment has been made by his heirs.

CHAPTER 14.

Mediation Between Husband and Wife

Par. 1. In cases referred to in chapter 11, paragraph 2, section one; or, if discord has in other ways arisen between husband and wife; or, if there arises between them a quarrel regarding the duty of support or about questions referred to in chapter 8, paragraphs 6 or 7, a spouse has the right to ask for mediation by the minister of the parish wherein either spouse is registered, by a minister of a congregation which has a right to public worship and to which either spouse belongs, by a person, who on petition has been appointed by the county judge or the president judge of the municipal court in the place wherein both or one of the spouses resides, or by a person, referred to in paragraph 2, who has been appointed to act as mediator in domestic difficulties in the community wherein one or both reside.

Par. 2. If the community has decided to appoint mediators in domestic difficulties, or if a need for such mediators becomes apparent, the parish council in the country-side, the Governor General of Stockholm, and the Board of Magistrates in other cities, or the city government, where no magistrates are found, shall appoint as mediators at least one

man and one woman. Mediators shall be appointed for two calendar years. If a mediator resigns before his term expires, another shall be appointed to fill the vacancy.

Par. 3. A mediator has the right to summon the spouses to appear before him. In a suitable manner he shall try to discover the cause of the dissension or the quarrel and try to effect reconciliation.

CHAPTER 15.

Certain Provisions Regarding Court Procedure

Marriage Suits

Par. 1. A marriage suit is a suit arising out of a dispute as to whether or not a man and a woman are really married, or a suit for annulment, separation, or divorce.

Par. 2. The question of whether or not two persons are actually married shall not be the subject of a special suit unless a dispute arises between them regarding the matter. Whenever any one's right is affected by a settlement of this question, it may be investigated.

Par. 3. In marriage suits, a feebleminded or an insane person shall be represented by his guardian.

Par. 4. Marriage suits shall be brought in the court of the place, wherein the defendant resides. If he does not reside within the Kingdom, the court of the place wherein the man and woman last had their residence together or, if they have had no joint residence in the Kingdom, wherein the plaintiff resides, shall have jurisdiction. If the suit is brought against the man and woman jointly, the court of the place wherein both or either lives, or, if neither lives in the Kingdom, where their last joint residence in the Kingdom was , shall have jurisdiction. If no court, in accordance with the above, has jurisdiction, the Magistrates' Court in Stockholm shall hear the case.

If both spouses desire separation, according to chapter 11, paragraph one, or divorce, according to chapter 11, paragraphs 3 or 4, they shall petition the court, which in accordance with the first section has jurisdiction in suits against them jointly.

A suit for annulment or divorce on the ground of a crime, for which conviction has been sought, may also be brought in the court, where the criminal suit is pending.

Par. 5. If the defendant has no known residence in the Kingdom and if no information of his whereabouts has been found, the summons may be served in the manner specified in chapter 11, paragraph 9, section two of the Law of Court Procedure, even though the situation is not one referred to in that paragraph.

This shall not apply, if the defendant has given notice in accordance with the provisions made in sections three and four of said paragraph.

Par. 6. If either party to the marriage suit desires it, the court may order the hearing to be held behind closed doors.

Par. 7. If a defendant, upon being properly summoned, remains away without showing legal cause, the court may, nevertheless decide the case. If the suit is thus decided, the provisions of the Law of Court Procedure, chapter 12, paragraphs 3-4, regarding rehearing shall in no case be applied.

Par. 8. A suit for separation, according to chapter 11, paragraph one, shall not be heard until it has been shown that mediation has taken place in accordance with chapter 14.

A suit for separation, according to chapter 11, paragraph 2, shall not

be heard unless it is shown that mediation has taken place, that the defendant upon being summoned has failed to appear for mediation, or that he could not be located. If the suit is to be heard although mediation has not taken place and the court finds that opportunity for mediation should be provided, the hearing shall be postponed and a suitable person appointed by the court as mediator with powers as provided in chapter 14, paragraph 3. If a spouse fails to answer a summons to appear before this mediator or if, for some other reason, mediation has not taken place before the date of the postponed hearing, no further postponement shall be made unless both spouses desire it.

Par. 9. The court is responsible for a complete investigation and may for that purpose secure necessary evidence. The mere admission of a circumstance by a party shall not be valid unless supported by other evidence. No oath shall be administered.

That which is here stated shall not be applied to special matters, in connection with the main case, regarding which the spouses can enter agreements.

If the court has summoned a party to appear in person and he fails to do so, he may be taken into court, if it is found suitable.

If the court has subpoenaed a person as witness, the provisions of the Criminal Law shall hold, as to the compensation of witnesses from public funds and its repayment in suitable parts.

Par. 10. Annulment or divorce shall not be granted on the ground of insanity or feeblemindedness unless a medical certificate regarding the illness has been presented. The King is empowered to prescribe further regulations regarding this certificate.

Par. 11. In suits for annulment, separation, or divorce, the court may, on petition of either spouse and in accordance with what is found reasonable, declare that, until a decree with full legal power is issued, the spouses shall live apart. The court may also order a spouse to contribute to the other's support in the meanwhile and may forbid them to visit each other on pain of imprisonment or a fine.

When bidding the spouses to live apart, the court may decide which spouse shall remain in the home. The one chosen is allowed to retain and use the other's chattels, which form a part of the household goods, unless the court makes other arrangements. Such decision shall remain in force until the division of the property takes place, in case a decree of annulment, separation, or divorce is issued. The provisions of chapter 5, paragraph 8, shall hold as to the right to use property belonging to a spouse, when the other has received such property, according to what has just been said.

If the writ has been served in the country (i. e. the countryside) but the suit has not come before the court, the judge may issue the above mentioned order on the plaintiff's petition. Before this order is issued, the defendant shall be given an opportunity to be heard on the petition. If the order has been given, the court shall, at the first opportunity during the hearing of the case, take the continuation of the order under consideration.

The decision mentioned in this paragraph shall have the same legal effect as a court decree but it can at any time be rescinded by the court.

Par. 12. When a separation decree is issued, the court may on the petition of a spouse make the prohibition mentioned in paragraph 11, section one, for any period of time found advisable.

Par. 13. If, in annulment, separation, or divorce suits, it is found that the consideration of special problems arising in connection with the

main question will lead to a considerable extension of time, the court may, on the demand of either party to the suit, take up the rest of the case for final decision.

Par. 14. In the lower court a record shall be kept of all separation suits pending there, setting forth the measures taken and all court decisions affecting the estate in each separate suit.

When separation has been granted, a notice shall immediately be sent to the Marriage Registry.

Separation of Property Suits

Par. 15. A petition for the separation of property shall be made in writing to the court in the town or to the judge of the country district where the man should answer in all disputes regarding his person or, if the man is not in duty bound to appear in such suits before a Swedish court, to the court or to the judge, before whom the woman should appear in such suits. If no court with jurisdiction exists, according to what has just been said, the suit shall be heard in the Magistrates' Court in Stockholm.

If there is no court day in the town and if there is no one appointed by the court to receive petitions in its name, the petitions may be given to the president of the court.

Par. 16. If the court or the judge finds that a petition for separation of property can not be considered because it is directed to the wrong court, or for some other reason, this decision shall be noted on the petition.

Par. 17. If the petition has been made by both spouses and there is no hindrance to its consideration, the court or the judge shall immediately render the decision of separation of property, unless a postponement is made in accordance with paragraph 20.

Par. 18. If the petition for separation of property is made by one spouse alone, the court or the judge shall note on the petition a summons to the spouses to appear before the court within eight days, if in the town, and, if in the country, on a specified day of the current or next ordinary session of the court or of the special session, if that is asked.

The petitioner shall take care that the other is informed of the summons. If the latter is absent on the day set for the hearing and it is not shown that he was informed of the summons early enough to enable him to be present, or if hindrance has prevented the communication of the information mentioned, the petition shall be void. If several attempts have been made to give the latter spouse a notice of the summons in his home and if neither he nor his agent has been found or any information gained as to his whereabouts, the court shall set a date for a further hearing in the matter and shall urge the spouse to appear before the court by inserting a notice in the general newspapers three times, the last time at least one month before the date set for the hearing.

If the spouse does not present himself, when the summons has been served in due order, the suit for separation of property shall nevertheless be taken up for final consideration.

Par. 19. If, in the country, a spouse, who is to be heard on the petition, has given the judge written assent to it, the judge shall immediately decree the separation of the property unless postponement is made, according to paragraph 20. In such cases the matter need not be taken to court.

Par. 20. If a spouse, who has petitioned for separation of the property, has demanded an inventory of the property, according to chapter 9, para-

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